

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1913~~ / 1914

No. ~~16~~ 17

ALEXANDER R. MAGRUDER AND ISABEL R. MAGRUDER,
APPELLANTS,

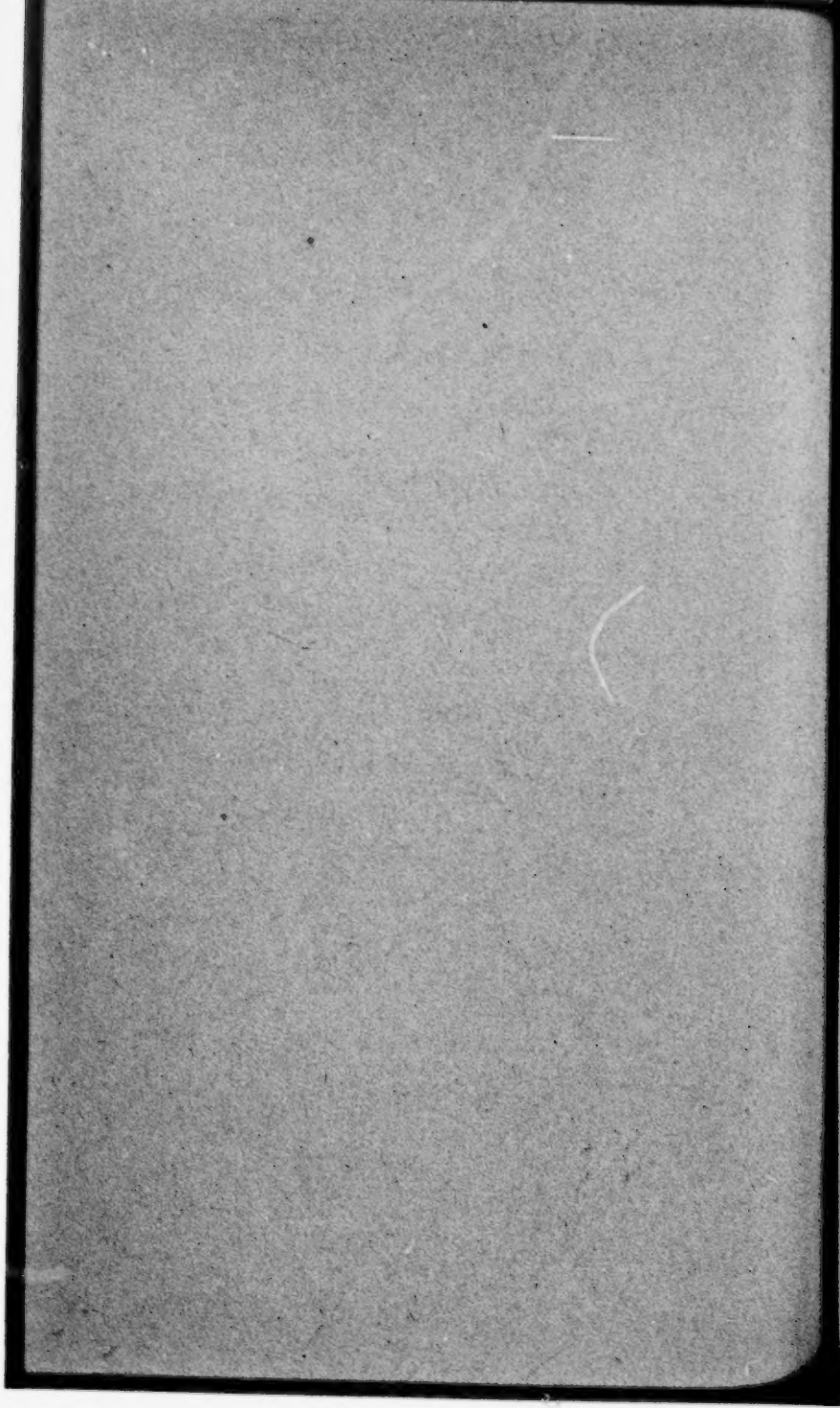
vs.

SAMUEL A. DRURY AND SAMUEL MADDOX, TRUSTEES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA.

FILED DECEMBER 30, 1911.

(22,991)



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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 155.

ALEXANDER R. MAGRUDER AND ISABEL R. MAGRUDER,
APPELLANTS,

vs.

SAMUEL A. DRURY AND SAMUEL MADDOX, TRUSTEES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA.

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In the Court of Appeals of the District of Columbia.

No. 2265.

ALEXANDER R. MAGRUDER et al., Appellants,

v^a

SAMUEL A. DRURY et al.

a Supreme Court of the District of Columbia.

In Equity. No. 20037.

ALEXANDER RICHARDSON MAGRUDER and ISABEL RICHARDSON
MAGRUDER, Plaintiffs,

vs.

GEORGE F. RICHARDSON, SAMUEL A. DRURY and SAMUEL MADDOX,
Trustees, Defendants.

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1

Bill.

Filed December 30, 1898.

In the Supreme Court of the District of Columbia.

In Equity. No. 20037.

ALEXANDER RICHARDSON MAGRUDER, ISABEL RICHARDSON MAGRUDER,
Infants, by Their Next Friend, ALEXANDER F. MAGRUDER, Plain-
tiffs,

vs.

GEORGE F. RICHARDSON, SAMUEL A. DRURY, Defendants.

To the Honorable the Justice of the Supreme Court of the District of Columbia, holding an Equity court for said District:

The plaintiffs, Alexander Richardson Magruder and Isabel Richardson Magruder, bring this their bill of complaint, by their next

friend, Alexander F. Magruder, against the above-named defendants, and thereupon they aver and show:

1. That they are infants, under the age of twenty-one years, the said Alexander having been born on the 17th day of January, A. D. 1883, and the said Isabel on the 20th day of April, A. D. 1886, and reside in the District of Columbia.

2. That defendant George F. Richardson is a citizen of the United States, commorant in the County of Middlesex, State of Massachusetts, and is sued as one of the executors of the will of the late William A. Richardson, and as one of the trustees appointed by said will.

3. That defendant Samuel A. Drury is a citizen of the United States, commorant in the District of Columbia, and is sued as one of the executors of the will of the late William A. Richardson, and as one of the trustees appointed by said will.

4. That said William A. Richardson departed this life in the District of Columbia, on the 19th day of October, A. D. 1896, having first made and executed a last will and testament, bearing date the 9th day of August, A. D. 1895. A copy of said will is herewith filed, marked "Compl'ts' Exhibit, No. 1", and it is prayed that the same may be read at the hearing of this cause and taken and considered a part hereof.

5. That said William A. Richardson left him surviving as sole heir at law and next of kin a daughter, Isabel, intermarried with said Alexander F. Magruder.

6. That said Isabel departed this life, intestate, in the District of Columbia, on or about the 4th day of April, A. D. 1898, leaving her surviving as sole heirs at law and next of kin these plaintiffs, who have always resided in the said District.

7. That the said William A. Richardson was on or about the 11th day of April, A. D. 1872, and for some years prior thereto had been, a Judge of Probate in the County of Middlesex, State of

3 Massachusetts, which said office he resigned on said date to become Assistant Secretary of the United States Treasury at or about said time he moved with his family to said city of Washington, in said District, which he ever thereafter till his death made his home. In the interval, he filled offices under the United States government as follows:

Secretary of the Treasury from the 17th day of March, A. D. 1873, to the second day of June, A. D. 1874;

Associate Justice of the Court of Claims from July 2, A. D. 1874, to January 20, A. D. 1885, and Chief Justice of the Court of Claims from January 20, A. D. 1885, to the date of his death.

During all the time aforesaid, to wit, from the 11th day of April, A. D. 1872, till the 19th day of October, A. D. 1896, he continued to live with his family in the said city of Washington, which he repeatedly declared was to be his home for the rest of his life. After so coming to said city of Washington, in the year 1872, he did not exercise any of the rights of citizenship in the State of Massachusetts, and did not even return to said State more than a few times, and then only for short visits.

In September, A. D. 1876, he bought a family burial lot in Oak Hill Cemetery, in the District of Columbia, and had his wife interred therein in that year. At his request, his body was also interred in said lot.

Early in the year 1885, the said William A. Richardson bought an expensive lot of ground situated at the corner of 17th and H Streets, N. W., in the said city of Washington, known as
4 part of Square 127, which he shortly thereafter improved by the erection thereon of a handsome dwelling-house at a cost, approximately, of \$35,000. In this house, he lived uninterruptedly till his death. His daughter, the said Isabel Magruder, mother of these plaintiffs, also made said house her home, as have these plaintiffs, since her death, by permission of the defendants.

As further evidence of his intention to make said city of Washington his home, the said William A. Richardson, shortly after his appointment as Associate Justice of the Court of Claims, began to close out his investments in the State of Massachusetts, and invested all of his money in the city of Washington, principally in real estate securities. And at the time of his death, as these plaintiffs are informed and believe, and so believing charge and aver and offer to prove, the said William A. Richardson had no property whatever in said State, except one or two parcels of unproductive real estate of trifling value, and no other property subject to the jurisdiction of the Courts of said State.

8. That said William A. Richardson was at the time of his death seized of other real estate in the city of Washington, known and designated as follows:

Lot 119, Square 981; Lot No. 37, Square 812, and part of lots 10 and 12, square 214; and possessed of personal estate consisting principally of loans on real estate security in said city, aggregating upwards of \$300,000.

9. That notwithstanding all of said facts and circumstances, indicating that the said William A. Richardson had abandoned his
residence in the State of Massachusetts, and could not in
5 law or in fact be longer considered a citizen or resident of said State, the defendants, as executors of said will, yielding to a recital at the commencement thereof to the effect that the testator was "a citizen and inhabitant of Cambridge in the County of Middlesex in the Commonwealth of Massachusetts", caused the said will to be duly filed for record and probated in one of the Probate Courts of said county, and procured letters testamentary of said estate to be issued to them out of said Court, although the last domicile and residence of said deceased was in the District of Columbia, and substantially all of his property in said District.

10. That complainants are advised by counsel, and believe, and so believing charge and aver that said Court of Probate was without jurisdiction in the premises, and has not and cannot have any authority or control whatever over the said estate. And these complainants fear that, unless they are protected in their rights, they will be subjected to inheritance and other taxes and dues in said State, although neither they, these plaintiff, nor their said mother,

ever had the protection of the laws of said State, or enjoyed any of the benefits of residence therein or citizenship thereof, and although their said grandfather many years ago gave up his residence in said State and established his permanent residence and home in the District of Columbia as hereinbefore more fully shown; and although no part of the property of these plaintiffs so devised to them in and by said will is located in said State or protected by its laws.

6 11. And these plaintiffs further show that under and by virtue of the powers and authority in said will contained, the defendants, as executors thereof and trustees thereunder, will have full and absolute control over said property and estate until the plaintiffs attain the ages of twenty-three and twenty-six years, respectively, and that they will receive and disburse large sums of money for the objects and purposes in said will specified. And these plaintiffs are advised that they are entitled to have defendants account in this Honorable Court for all the property and estate passing under said will, from time to time, and as often as may be necessary, and that such an accounting will be a protection to the defendants in the execution of their trust.

12. And these plaintiffs further show, on information and belief, that the said George F. Richardson has filed in the Probate Court out of which letters testamentary issued to defendants, as hereinbefore shown, his resignation both as executor and trustee under said will.

To the end, therefore, that the plaintiffs may have that relief which can only be had in a Court of Equity, they

Pray.

1. That the said George F. Richardson and Samuel A. Drury may be made parties defendant to this bill, and the said Samuel A. Drury be served with process requiring him to be and appear in this Honorable Court by some day to be in said process named, to answer the premises and abide by and perform such order or decree

7 as may be passed therein: and for as much as the said George F. Richardson is not a resident of the District of Columbia, that an order of publication may be passed giving notice to him of the substance and object of this bill, and warning him to appear in this Court, in person, or by solicitor, on or before a certain day to answer the premises and show cause, if any he has, why a decree ought not to be passed as prayed.

2. That the last will and testament of the said William A. Richardson may be construed and the rights of these plaintiffs thereunder ascertained and fixed by the decree of this Honorable Court.

3. That an account may be taken of all the property and estate which have been received by the defendants as executors and trustees under said will, and which, without wilful default, they might have received since they qualified as such executors, without abatement for charges or taxes, if any, claimed by the State of Massachusetts.

4. That said defendants, as executors and trustees as aforesaid, be required to file accounts from time to time and as often as may be necessary, showing what moneys they receive and the disposition thereof.

5. That, if it be true, as these plaintiffs are informed, that the said George F. Richardson has filed his resignation as executor and trustee under said will, and refuses or declines to further act as such, some fit and proper person may be appointed in his place and stead to carry out and perform the wishes and intent of the said William A. Richardson as set forth in his last will and testament.

8 And for such other and further relief as the nature of the case may require and to the Court may seem fit and proper. And complainants will ever pray, etc.

SAM'L MADDUX,
Solicitor for Complainants.

A. F. MAGRUDER.

DISTRICT OF COLUMBIA, 88.

Before me, the undersigned, personally appeared Alexander F. Magruder, who being first duly sworn according to law, deposes and says:

I have read over the foregoing bill of complaint, by me subscribed, and know the contents thereof; the matters and things therein stated as of my own knowledge are true, and the matters and things stated on information and belief, I believe to be true.

A. F. MAGRUDER.

Subscribed and sworn to before me this 28th day of December, A. D. 189-.

J. R. YOUNG, *CLK.*
By R. J. MEIGS, JR., *Asst CLK.*

9 *Amended Bill.*

Filed March 6, 1899.

In the Supreme Court of the District of Columbia.

In Equity. No. 20037.

ALEXANDER RICHARDSON MAGRUDER, ISABEL RICHARDSON MAGRUDER, Infants, by Their Next Friend, Alexander F. Magruder, Plaintiffs,

vs.

SAMUEL A. DRURY, Defendant.

To the Honorable the Justice of the Supreme Court of the District of Columbia, holding an Equity Court for said District:

The plaintiffs, Alexander Richardson Magruder and Isabel Richardson Magruder, bring this their amended bill of complaint, by

their next friend, Alexander F. Magruder, against the above named defendant, and thereupon they aver and show:

1. That they are infants, under the age of twenty-one years, the said Alexander having been born on the 17th day of January, A. D. 1883, and the said Isabel on the 20th day of April, A. D. 1886, and reside in the District of Columbia.

2. That defendant Samuel A. Drury is a citizen of the United States, commorant in the District of Columbia, and is sued
10 as one of the executors of the will of the late William A. Richardson, and as one of the trustees appointed by said will.

3. That said William A. Richardson departed this life in the District of Columbia, on the 19th day of October, A. D. 1896, having first made and executed a last will and testament, bearing date the 9th day of August, A. D. 1895. A copy of said will was filed as an Exhibit to the original bill of complaint in this cause, marked "Complainant's Exhibit No. 1" and it is prayed that the same may be read at the hearing of this cause and taken and considered a part hereof.

4. That said William A. Richardson left him surviving as sole heir at law and next of kin a daughter, Isabel, intermarried with said Alexander F. Magruder.

5. That said Isabel departed this life, intestate, in the District of Columbia, on or about the 4th day of April, A. D. 1898, leaving her surviving as sole heirs at law and next of kin these plaintiffs, who have always resided in the said District.

6. That the said William A. Richardson was, on or about the 11th day of April, A. D. 1872, and for some years prior thereto had been, a Judge of Probate in the County of Middlesex, State of Massachusetts, which said office he resigned on said date to become Assistant Secretary of the United States Treasury. At or about said time he moved with his family to said city of Washington, in said District, where he ever thereafter till his death made his home.

In the interval, he filled offices under the United States
11 government as follows:

Secretary of the Treasury from the 17th day of March, A. D. 1873, to the second day of June, A. D. 1874;

Associate Justice of the Court of Claims from July 2, A. D. 1874, to January 20, A. D. 1885, and Chief Justice of the Court of Claims from January 20, A. D. 1885, to the day of his death.

During all the time aforesaid, to wit, from the 11th day of April, A. D. 1872, till the 19th day of October, A. D. 1896, he continued to live with his family in the said city of Washington, which he repeatedly declared was to be his home for the rest of his life. After so coming to said city of Washington, in the year 1872, he did not exercise any of the rights of citizenship in the State of Massachusetts, and did not even return to said State more than a few times, and then only for short visits.

In September, A. D. 1876, he bought a family burial lot in Oak Hill Cemetery, in the District of Columbia, and had his wife interred

therein in that year. At his request, his body was also interred in said lot.

Early in the year 1885, the said William A. Richardson bought an expensive lot of ground situated at the corner of 18th and H streets, N. W., in the said city of Washington, known as part of Square 127, which he shortly thereafter improved by the erection thereon of a handsome dwelling-house at a cost, approximately, of \$25,000. In this house, he lived uninterruptedly till his death.

12 His daughter, the said Isabel Magruder, mother of these plaintiffs, also made said house her home, as have these plaintiffs, since her death, by permission of the defendant and George F. Richardson, the other executor and trustee named in said will.

As further evidence of his intention to make said city of Washington his home, the said William A. Richardson, shortly after his appointment as Associate Justice of the Court of Claims, began to close out his investments in the State of Massachusetts, and invested all of his money in the city of Washington, principally in real estate securities. And at the time of his death, as these plaintiffs are informed and believe, and so believing charge and aver and offer to prove, the said William A. Richardson had no property whatever in said State, except one or two parcels of unproductive real estate of trifling value, and no other property subject to the jurisdiction of the Courts of said State.

7. That said William A. Richardson was at the time of his death seized of other real estate in the city of Washington, known and designated as follows:

Lot 119, Square 981; Lot No. 37, Square 812, and part of lots 10 and 12, square 214; and possessed of personal estate consisting principally of loans on real estate security in said city, aggregating upwards of \$300,000.

8. And these plaintiffs charge, on information and belief, that since the death of the said William A. Richardson several deeds of trust intended to secure the payment of certain notes belonging to his estate, have been foreclosed, and the real estate by them conveyed bought in by defendant for and on account of said estate upon which taxes as fixed by the laws in force in said District are now charged and paid out of the estate of said deceased.

13 9. That notwithstanding all of said facts and circumstances, indicating that the said William A. Richardson had abandoned his residence in the State of Massachusetts, and could not in law or in fact be longer considered a citizen or resident of said State, the defendant and said George F. Richardson, as executors of said will, yielding to a recital at the commencement thereof to the effect that the testator was "a citizen and inhabitant of Cambridge in the County of Middlesex in the Commonwealth of Massachusetts" caused the said will to be duly filed for record and probated in one of the Probate Courts of said county, and procured letters testamentary of said estate to be issued to them out of said Court, although the last domicile and residence of said deceased was in the District of Columbia, and substantially all of his property in said District.

10. That complainants are advised by counsel, and believe, and so believing charge and aver that said Court of Probate was without jurisdiction in the premises, and has not and can not have any authority or control whatever over the said estate. And these complainants fear that, unless they are protected in their rights, they will be subjected to inheritance and other taxes and dues in said State, although neither they, these plaintiffs, nor their said

14 mother, ever had the protection of the laws of said State, or enjoyed any of the benefits of residence therein or citizenship thereof, and although their said grandfather many years ago gave up his residence in said State and established his permanent residence and home in the District of Columbia as hereinbefore more fully shown; and although no part of the property of these plaintiffs so devised to them in and by said will is located in said State or protected by its laws.

11. And these plaintiffs further aver and show that although the said George F. Richardson qualified as one of the executors of said will, at or about the time of its probate in the said County of Middlesex, yet he did not and has not undertaken to perform any duty as such executor, beyond attending to the routine proceedings in said Court. To the contrary thereof these plaintiffs aver that the entire care, custody and management of said estate have devolved upon the defendant who from the date of said probate has had in his keeping, and now has, all the money, securities and other assets of said estate, except only the household furniture belonging thereto, and has disbursed all moneys paid out and expended in and about the settlement of said estate and for the maintenance and support of these petitioners.

12. And these petitioners further show that under and by virtue of the powers and authority in said will contained, the executors thereof and trustees thereunder will have full and absolute control

over said property and estate until the plaintiffs attain the
15 ages of twenty-three and twenty-six years, respectively, and that they will receive and disburse large sums of money for the objects and purposes in said will specified. And these plaintiffs are advised that they are entitled to an accounting in this Honorable Court for all the property and estate passing under said will, from time to time, and as often as may be necessary, and that such an accounting will be a protection to the defendant in the execution of his trust.

13. That said George F. Richardson has declined to act as trustee under said will, by an instrument in writing, addressed to the Honorable, the Judge of said Probate Court, a certified copy whereof is herewith filed, marked "Complainant's Exhibit No. 2", which it is prayed may be read at the hearing of this cause and taken and considered a part hereof.

To the end, therefore, that the plaintiffs may have that relief which can only be had in a Court of Equity they pray:

1 That the said Samuel A. Drury may be made party defendant to this amended bill, and duly served with process requiring him to be and appear in this Honorable Court by some day to be in said

process named, to answer the premises and abide by and perform such order or decree as may be passed therein.

2. That the said last will and testament of the said William A. Richardson may be construed and the rights of these plaintiffs thereunder ascertained and fixed by the decree of this Honorable Court.

3. That an account may be taken of all the property and assets which have been received by the defendant as executor and trustee under said will, and which, without wilful default, he might have received, since he qualified as such executor, without any abatement for charges, assessments or taxes, if any, claimed and asserted by the State of Massachusetts against said estate.

4. That said defendant, as executor and trustee as aforesaid, be required to file accounts from time to time and as often as may be necessary, showing what moneys he has received, and the disposition thereof.

5. That some fit and proper person may be appointed in the place and stead of the said George F. Richardson to carry out and perform the wishes and intent of the said deceased, as set forth in his last will and testament.

6. That in the meantime the defendant may be restrained, by an order issuing out of and under the seal of this Honorable Court, from paying out any money in his hands belonging to said estate as for dues, taxes, or other charges to the said State of Massachusetts.

And for such other and further relief as the nature of the case may require and to the Court may seem fit and proper.

And petitioners will ever pray, etc.

ALEXANDER F. MAGRUDER.

SAM'L MADDOX,

Solicitor for Complainants.

17 DISTRICT OF COLUMBIA, *scilicet*:

Before me, the undersigned, personally appeared Alexander F. Magruder, who being first duly sworn according to law, deposes and says:

I have read over the foregoing bill, by me subscribed, and know the contents thereof. The matters and things therein stated as of my own knowledge are true, and the matters and things stated on information and belief, I believe to be true.

ALEXANDER F. MAGRUDER.

Subscribed and sworn to before me this 6th day of March, A. D. 1899.

J. R. YOUNG, *Clerk*.

By R. J. MEIGS, JR., *Ass't Clerk*.

18 "COMPLAINANTS' EXHIBIT No. 1".

Will of William A. Richardson.

Know all men by these presents: That I, William A. Richardson, Chief Justice of the Court of Claims at Washington, a citizen and

inhabitant of Cambridge, in the County of Middlesex and Commonwealth of Massachusetts, and having property in said County, do make and publish this my last Will and Testament:

1. The portrait of my friend and classmate, Rev. Dr. Thomas Hill, painted by himself at the age of sixty-six, at my request, and the result of the first effort of the kind ever made by him, as stated in the Latin inscription on the face of the canvas, I give and bequeath to Harvard College, of which he was for sometime the President.

2. The portrait of myself, painted by Robert Hineckley, I give and bequeath to the Court of Claims, to be delivered, as also that of Dr. Hill, at such time as the family or my executors think best; unless the family or my executors decide upon some other arrangement as to the disposition of my portrait.

3. I set apart whatever sum may be necessary, to be expended by my executors in printing, binding, and distributing to friends and libraries, at home and abroad, my biography to be written by my good friend, Frank W. Hackett, Esq. (graduate of Harvard, 1831) as a labor of love, if he be willing to so undertake it, or failing his acceptance, any other person or persons who may be inclined to do it in like manner, to be designated by my brother, George, or by my executors. All expenses the writer may incur in the work to be repaid to him out of my estate.

4. To each of my grandchildren, now or hereafter born, I give and bequeath such jewelry, silver ware, books, personal and household ornaments and articles of furniture as they may select, with the approval of my executors in consultation with the family, to be delivered to them respectively whenever it may be thought best, and presents of any such things and other personal chattels of any kind may be made by my executors in their own discretion at the suggestion of any member of the family.

5. All the rest, residue and remainder of my estate, real and personal, after payment of my debts (secured and unsecured), funeral expenses and the expenses of administration, I give, devise and bequeath to my executors or to whomsoever administers my estate, upon the following trusts:

To collect the income, and the principal when they decide best to do so, pay taxes, insurance, repairs and other expenses; keeping careful accounts of sales, transfers, receipts, investments (in real or personal estate), and of all income, disbursements, and expenditures, so that the exact condition of the estate and the disbursements of all money received may at all times appear by the accounts, which shall be open to the inspection and examination of the parties interested, and copies of which shall be furnished at any and all times when requested by them or either of them.

To expend so much of the income (and of the principal if necessary in case of an emergency, to be restored from future income when practicable and without too much curtailment of the income) of the estate as may be required for the comfortable and economical support of my daughter, Isabel Rich-

ardson Magruder, wife of Dr. Alexander F. Magruder, Surgeon in the Navy, and for the support and the complete and liberal education of her children, whether they live with her or elsewhere, whether they are at school, college, or otherwise apart from their mother during her natural life as well as after her decease.

If my daughter lives until a child (one or more) marries, has a family, or ceases from any cause to live with her, then the income of my estate shall be appropriated among her and her children by my executors, in such proportions as they deem best, the same to be expended by my executors, and if they have any doubts as to the appropriations, then the same to be determined by the Probate Court, always seeing to it that the education and support of her children shall not be neglected nor suffer by the distribution. The education is first of all to be securely and amply provided for. I do not mean that it shall be necessary to expend the whole income, but only so much as my executors deem best. My executors, if they deem best for the interest and well being of my daughter and her children, may permit her and them to use the present residence in Washington, with the household goods and other family and personal articles, or may provide a residence for them elsewhere in or out of Washington, whenever they think it best, at any
21 time, to sell or lease the homestead, or for any other reason satisfactory to them.

As my grand children grow up and become settled in life by marriage, engaging in business or otherwise (before, at or after those periods) my executors, in their discretion, at such time or times, and under such circumstances as they may deem best, may advance to said grand children, any parts of the principal of my estate, to be deducted from their respective shares at the final distribution. If any advance be made to one child, the same amount shall be set aside for the other or each of the others, who shall have the benefit of the income thereof until the final distribution, and then shall have the principal and the accumulated and unexpended interest thereon.

I think it would be well, from near the beginning, to let each child know how much may be allowed for his or her maintenance and education and let them understand that whatever is saved from the same will be held, severally, for their benefit, and whatever is so saved with the accrued income thereof I direct to be paid over on their arrival respectively at the age of twenty-one years.

6. At the decease of my daughter the whole trust estate, including what remains of the original investments, real or personal, made by my executors, and all personal chattels not used up by my daughter in the maintenance of herself and her family, I give, bequeath and devise in equal shares to the children then living of my daughter, and the issue of any deceased child by right of representation.
22 free and discharged from all further trusts, provided that one-half thereof shall be turned over to such child at the age of twenty-one years, and the other half at the age of twenty-six years, or as soon thereafter as, in either case, it may be called for, and that if either child dies while the property or any part of it is

held in trust by not having been called for or otherwise, the share of such child shall go to the survivor or survivors in equal shares and the issue of any deceased child by right of representation on the same terms, and in case there is no survivor, then the whole shall go as provided in the next succeeding clause.

If my daughter outlives all her issue and dies without lineal descendants then I give, devise and bequeath all the estate remaining unused for her support to the lineal descendants of my father, Daniel Richardson, to be divided and distributed among them according to the laws of Massachusetts for the descent and distribution of the estate of deceased persons.

If my daughter ever has another husband, then from that time she shall have no further support and maintenance from my estate and no further interest therein or benefit therefrom, and the estate then remaining shall immediately be distributed, vested or disposed of as provided in this will upon her decease. I do this in the hope that her children may never have a stepfather.

7. If it becomes necessary to appoint a guardian for my grandchildren, I recommend some Massachusetts man be selected for the trust.

23 I desire that my executors will look after the welfare of the family and advise and assist the same, as Doctor Magruder is necessarily often absent from home on his official duties and is obliged to leave them without a man to advise and guide them.

8. While I have provided that so much of the income and principal (if necessary) as may be required for the economical and comfortable support of my daughter and her family may be used for that purpose, it is my object and desire that the principal will not be diminished, but rather increased in the hands of my executors, so that my grandchildren will receive as much as my estate is when it comes to the hands of the executors, or more than that, as I think, with good management the estate might be increased.

9. I authorize and empower my executors to sell at private sale and convey any part or portion of real or personal estate or any rights therein, which I may own at my decease, wherever situated, and invest the proceeds in real or personal estate, according to their discretion, and for the purposes herein expressed, whenever they think those purposes will be best served by so doing and they may sell and convey the whole if they deem best; all conveyances to be free and discharged from all trusts and from all liabilities of the purchasers to see to the application of the purchase money. They may also carry out and execute any agreements to convey real estate and any declarations of trust made by me which may be outstanding at the time of my decease.

24 10. My general purpose is to provide for the support of my daughter during her life and also for the support and education of her children until the estate finally goes to them, whether they live with her or elsewhere; and whatever questions may arise upon the construction of any provisions of my will must be considered in the light of this clause.

11. At the end of twenty-one years after the death of my daughter

all the trusts accrued by my will, if not previously fully executed, shall then terminate and the balance of the estate then on hand shall be paid over, delivered or conveyed to her children as in said will provided, discharged of all trusts, without reference to their ages. I add this provision out of super-abundance of caution, lest, under some contingencies, the law against creating perpetuities may be injudiciously raised and the estate unnecessarily subjected to expensive litigation.

12. I hereby nominate my brother, George F. Richardson, Esq., of Lowell, Massachusetts, and Samuel A. Drury, Esq., of Washington, D. C., executors of my will, and request and direct that no bonds or no sureties be required on their bonds; each to be responsible for his own acts and not for those of the other; but this shall not preclude the Court from requiring bonds with sureties for either of them at any time on request of any parties in interest.

I also nominate my grandson, Alexander Richardson Magruder, to be appointed by the Probate Court an additional co-executor with my brother and Mr. Drury when he attains the age of twenty-one years without sureties on his official bond. I make this

25 latter nomination because Alexander has a special interest in some trust estates in my hands which he can look to when he becomes older and because I am anxious that Alexander should early learn a knowledge of business and acquire good business ideas and habits, and I join him as one of the co-executors because I think it will afford him an opportunity of doing so. He is a good and thrifty boy and I want him to be a good and thrifty man, looking out for his own interests and the interests of his lovely sister, for whom he must always consider himself a protector and guide, and I especially want him to avoid all bad habits of every kind and to lead an exemplary life, with kindness and dutiful attention to his mother.

13. Whenever there becomes a vacancy in the office of executor by the non-acceptance, resignation, death or otherwise of either my brother George or Mr. Drury, I request that in the place of my brother there be appointed a Massachusetts man, and I prefer a relative if any there be well qualified, and in the place of Mr. Drury one of the best business men of Washington, like him, or in the discretion of the Probate Court, one of the loan and trust companies of Washington, with or without sureties on the official bond, as the Court may decide, upon the recommendation of the remaining executor or any parties in interest. But a vacancy in the co-executorship of Alexander need not be filled.

I desire that my executors shall be paid each for the actual services rendered by himself only and that they shall not be responsible for each other's acts.

26 14. Whatever powers, authority or discretion I have given to my executors I give to whosoever settle my estate, and I see no reason why my executors may not perform all the duties of the trust under their appointment as executors, without being specially bonded as trustees.

In witness whereof I, said William A. Richardson, hereunto set my hand and seal this 9th day of August, in the year 1895.

(Signed)

WILLIAM A. RICHARDSON.

27

Answer of Samuel A. Drury.

Filed March 11, 1899.

* * * * *

This defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereto, or to so much thereof as he is advised it is necessary or material for him to make answer unto, answering, says:

1-5. He admits to be true the averments of paragraphs One (1), Two (2), Three (3), Four (4), and Five (5) of said bill.

6. Answering paragraph six (6) this defendant admits that he has heard and believes to be true the averment thereof that the late William A. Richardson filled the offices of Assistant Secretary and Secretary of the Treasury, but he does not know the time or duration of such services. Nor does he know when the said deceased came to the District to live, or the length of time during which he occupied a seat in the United States Court of Claims, either as Associate Justice or as Chief Justice of said Court, though he admits to be true the averment of said paragraph that the said deceased was Chief Justice of the said Court when he died. This defendant further says that since about the year 1886, when he first knew the said deceased, he was living with his family in the city of Washington, in said District, and lived there until his death.

Further answering said paragraph, this defendant admits to be true so much thereof as avers the purchase of the family burial lot in Oak Hill Cemetery, and the purchase of a lot of ground on the corner of 18th and H Streets in said city and the erection thereon of a dwelling house during the years 1885 and 1886, or thereabouts, in which he lived till his death; also the fact that his daughter continued to live there after her father's death; and that her children, plaintiffs herein, are now living in said house with the consent and permission of this defendant and one George F. Richardson, named in said will as the executors thereof and trustees thereunder.

And further answering said paragraph, this defendant admits to be true so much thereof as avers that said William A. Richardson, at the time of his death, had closed out all of his investments in Massachusetts, except one or two pieces of real estate of little value, and invested the larger part of the proceeds in securities in the District of Columbia, principally in notes secured by second deeds of trust on real estate.

7. This defendant admits to be true the averments of paragraph seven (7) of the amended bill.

8. Answering paragraph eight (8), this defendant says that for

many years prior to the death of said William A. Richardson, he, this defendant, and one John T. Arms, with whom this defendant is associated in business, had charge of the investments of money

29 for said deceased, and, as above shown, a large part thereof was invested in what are known as "second trust notes."

During the year 1893, the business depression, then everywhere prevailing throughout the country, produced a material decrease in real estate values in said District, which has since continued. In consequence of this depression and decrease, many parcels of real estate, given as security for the payment of said notes, or some of them, have been sold since the death of said deceased, at public auction under the several deeds of trust, and bought in for account of the estate to save it, if possible, from loss. Some fifteen or twenty different parcels have been so sold and bought, with the result that many thousands of dollars of personal property have been thereby converted into real estate, and as such taxable only in said District.

9. Answering the averments of paragraph nine (9), this defendant says that the deceased, before his death, deposited his last will with him, this defendant. The said George F. Richardson, a resident of Massachusetts and a brother of the deceased, came on to attend the funeral. After the funeral, the will was handed to said George F. Richardson, who then stated that it was his deceased brother's wish that his will should be probated in Massachusetts and his estate there administered. This defendant interposed no objection to said procedure and consented to such probate and administration, not being then advised that there was any question of jurisdiction of the Massachusetts Court to admit said will to probate, and relying in that behalf upon his co-executor, the said

30 George F. Richardson, himself a lawyer of great learning and distinction in that State.

10. This defendant is advised that it is not necessary for him to answer the averments of paragraph ten (10) of the bill.

11. Answering the averments of paragraph eleven (11), this defendant admits that the said George F. Richardson has not undertaken to manage or control the estate of said deceased, or in any way to interfere with the management thereof by this defendant. And this defendant admits that he has had the entire care, custody and management of said estate since the will was probated, has received and disbursed and is responsible for the moneys paid out and expended, and now has in his possession all the personal assets of said estate, except only the household furniture thereto belonging, all of which, as this defendant believes, still remains and is in the said dwelling house, being necessary for the comfort of the plaintiffs.

12. Answering the averments of paragraph twelve (12), this defendant says that he is advised by counsel and believes that under and by virtue of the trusts reposed in the executors and trustees in said will named and nominated they will have full control of all the property of said deceased, both real and personal, until such time as the plaintiffs attain the ages of twenty-three (23) and twenty-six (26), respectively, and that said executors and trustees will during that period receive and disburse large sums of money for the purposes in said will specified. And answering for

himself, this defendant is willing and hereby consents to now account in this Honorable Court, or in any other Court having jurisdiction in that behalf, for all moneys and other property received by him as such executor and trustee, and to hereafter further account from time to time and as often as may be necessary or proper.

13. This defendant knows nothing of his own knowledge of the averments of paragraph thirteen (13) of the amended bill, but has no reason to doubt the truth thereof. And if it be true, as in said paragraph alleged, that the said George F. Richardson declines to act as trustee under said last will and testament, this defendant is willing and hereby consents that some fit and proper person may be appointed by this Honorable Court to act as such trustee, along with this defendant, in the place and stead of said George F. Richardson.

And having fully answered said bill or so much thereof as he is advised it is necessary for him to make answer unto, this defendant prays to be hence dismissed with his reasonable costs in this behalf most wrongfully incurred.

And defendant will ever pray, etc.

SAMUEL A. DRURY.

J. ENOS RAY, Jr.,

Solicitor for Defendant Samuel A. Drury.

32 DISTRICT OF COLUMBIA, *set*:

Before me, the undersigned, personally appeared Samuel A. Drury, who, being first duly sworn according to law, deposes and says:

I have read over the foregoing answer, by me subscribed, and know the contents thereof. The matters and things therein stated as of my own knowledge are true, and the matters and things stated on information and belief I believe to be true.

SAMUEL A. DRURY.

Subscribed and sworn to before me this 11th day of March, A. D. 1899.

[SEAL.]

EMMA M. GILLETT,

Notary Public.

Decree Continuing Restraining Order, &c.

Filed April 1, 1899.

* * * * *

This cause coming on for final hearing on the amended bill, the answer of defendant Drury thereto, and the proofs taken in support thereof, and being submitted without argument and duly considered, it is, thereupon, this 1st day of April, A. D. 1899, ordered that the restraining order heretofore passed in this cause be, and it is hereby, continued till the further order of the Court:

33 And it appearing to the Court that the late William A. Richardson was last domiciled in the District of Columbia, and that the sole beneficiaries under his last will and testament bearing date

the 9th day of August, A. D., 1895, his grandchildren, the infant complainants herein, have always lived, and are now living, in said District, it is, the day and year aforesaid, adjudged, ordered and decreed that Samuel A. Drury and Samuel Maddox, both of said District, be, and they are hereby, appointed trustees to perform the trusts created in and by said will, and authorized and empowered to receive from the executors named in said will all the property whereof the said deceased died seized and possessed, provided, nevertheless, that the said Samuel A. Drury and Samuel Maddox shall first give separate bonds in the penal sum of Twenty-five thousand dollars, each, with one or more sureties to be approved by this Court, conditioned for the faithful discharge of their duties as such trustees.

By the Court:

CHAS. C. COLE, *Asso. Justice.*

Order Referring Cause to Auditor.

Filed October 18, 1899.

* * * * *

On motion of the plaintiffs, it is, this 18th, day of October, A. D. 1899, ordered that this cause be and it is hereby referred
34 to the auditor to ascertain and report the amount and character of the estate, real and personal, whereof the late William A. Richardson died seized and possessed, and to state the account of the executors and trustees under the will of said deceased.

By the Court:

JOB BARNARD, *Justice.*

Auditor's First Report.

Filed December 19, 1900.

* * * * *

This cause was, by an order passed on the 18th. of October, 1899, referred to me to ascertain and report the amount and character of the estate, real and personal, whereof the late William A. Richardson died seized and possessed, and to state the account of the executors and trustees under the will of the said deceased. Upon the cause being moved in this office and after due notice, I proceeded under this order of reference and return the said accounts stated in the schedules herewith, together with the vouchers and exhibits submitted and filed.

The bill in this case is filed on behalf of the two grandchildren of the late William A. Richardson, appearing by their next friend, and sets forth that the said William A. Richardson died in
35 this District in October 1896, leaving a last will and testament, and appointing the defendants, George F. Richardson

and Samuel A. Drury, executors of the said will; that the defendant, Richardson, caused the said will to be filed for record and probate in the Probate Court of the County of Middlesex in the State of Massachusetts. The bill averred that at the time of his death, the testator was, and had been for many years, a resident of this District, and prayed that the further administration of his estate might be under the order and direction of this Court.

Thereupon this Court made a decree on the 1st. of April, 1899 appointing Samuel A. Drury and Samuel Maddox trustees to perform the trusts created by the said will, and to receive from the executors named in the will all property whereof the said deceased died seized and possessed.

The trustees named in this decree having qualified according to its terms, received from the executors the personal estate of the testator and took charge of his real estate, and under the order of October 18th, 1899, they presented their accounts here for examination and report.

The will of the testator, a copy of which is filed in this cause as Complainants' Exhibit No. 1, after certain specific legacies and the payment of debts, funeral expenses, &c., gives devises and bequeathes the residue of the estate real and personal, to his executors or whosoever should administer his estate, upon the trusts hereinafter described.

Schedule A contains the account of the principal personal estate. The assets received by the trustees from the executors consisted of household effects, carriages, harnesses and stable equipments 33 which are charged to the trustees at their original appraisement, stocks which are charged on the same basis and one lot of stock of unknown value, a large number of promissory notes aggregating \$248,569.01 and reported as good, other promissory notes aggregating \$26,907.96 and reported as desperate, and a sum of money. The promissory notes first named are enumerated in detail in Schedule B, and their aggregate amount of principal is charged to the trustees in Schedule A. The notes reported as desperate are enumerated in a statement of the trustees marked Exhibit B 1.

The trustees have paid to the executors the commissions allowed by the Court in the settlement of their accounts, they (the executors) not having in hand funds sufficient for that purpose. The trustees have also paid off indebtedness secured by deeds of trust as set forth in this Schedule and in Schedule F. In addition to their credits I have allowed counsel for services rendered the estate in an ejectment suit and in the present proceedings, these allowances being in my judgment reasonable compensation for the services which are set forth in a statement of counsel filed herewith. During the period covered by this accounting the trustees have collected certain of the promissory notes above-mentioned, which are enumerated in Schedule C and aggregate the sum of \$127,467.81. They have invested the funds in the purchase of other promissory notes to the extent of \$74,307.40 and have in hand as of April 30th, 1900, notes

as enumerated in Schedule E, aggregating in amount of principal \$195,408.60.

37 The five shares of stock of the Lowell Manufacturing Company constituting part of the original estate *has* been converted into thirty-five shares of stock of the Bigelow Carpet Company which for the purposes of this report are considered of the same value as the original appraisement of the former stock.

Schedule A then shows the principal personal estate in the hands of the trustees as of April 30th, 1900.

Pursuant to the direction of the order of reference I have also stated in this Schedule the real estate constituting a part of this trust and in the control and management of the trustees. In addition to the real property the title of which is vested in the estate, the trustees, by virtue of arrangement with the owners for the gradual payment of indebtedness to the estate, collect and receive the rental of four other parcels of property which for information are noted at the foot of this Schedule.

In Schedule G I have stated the account of income, charging the trustees with their receipts of interest, dividends and rents, the income from a special account with H. D. Cooke and an item of protest fees collected. The trustees hold certain policies of insurance on the life of H. D. Cooke as security for debt and keep a special account of moneys received on his account and disbursements made in maintaining the securities.

I have allowed credit for these disbursements, also for the payment of interest on trust indebtedness, taxes, insurance, repairs, and other necessary expenses. I have allowed the trustees the

38 full commission on their collections of income. These collections and their disbursement form but a part of the service imposed upon these trustees and a much smaller part of their responsibility. I have taken into consideration the magnitude of the principal personal estate and its shifting character as illustrated by the conversion of more than one-half of the promissory notes into money during the period of this account and the reinvestment of the funds in other safe, interest bearing securities as well as the discharge of nearly thirty thousand dollars of liens upon the real estate. The compensation allowed in this report is less than the value of the service but no more is claimed by the trustees. The will of the testator directs the income of the estate to be applied to the support and education of his grandchildren and the trustees have made payments to the guardian for that purpose. These disbursements are credited to the trustees in this account.

There appears to be due to this income account from the Eliza C. Magruder trust a sum for moneys advanced to or for that trust which can be adjusted in the future.

Eliza C. Magruder Trust.

On the 9th day of February, 1894, Eliza C. Magruder and other parties conveyed to William A. Richardson certain real estate in Washington and Georgetown in the District of Columbia and in

the City of St. Louis, Missouri, and transferred to him forty-seven shares of the capital stock of the Georgetown Gas Light Company.

39 On the same date the said Richardson executed a declaration of trust acknowledging that he held all of the said property in trust to collect the income, pay taxes, insurance and repairs, to sell the property, real and personal, with the consent of the said Eliza and reinvest the proceeds to be held on the terms of the trust, and to pay over to the said Eliza C. Magruder the net income in quarterly, annual or monthly payments.

This property was held by the testator William A. Richardson at the time of his death subject however to an assignment by him to the said Eliza C. Magruder of the dividends and income of the Gas Company stock with an irrevocable power of attorney to her to draw such dividends in her own name during her life. This assignment and power of attorney was executed at the date of the declaration of trust.

That instrument further declares that upon the death of the said Eliza, the declarant was to convey and transfer all of the said estate, real and personal, to the children of Alexander F. Magruder.

It further provided that upon the death of the declarant all the trusts, powers and obligations vested in him by the said conveyances and the said declaration should vest in and be executed by his executors or whoever should settle his estate, in the same manner as they vested in him.

A copy of this declaration is filed as a part of this report.

The accounting trustees took charge of this trust which for convenience is described in this report as the "Eliza C. Magruder Trust" and collected the rents of the real estate.

40 Neither the testator in his lifetime nor these trustees received any dividends or income of the Gas Company stock and are not accountable for such income.

In Schedule H I have stated the account of these trustees of their dealings with this special trust, setting forth the changes of investment, the receipts of income in rents and interest, the expenditures for taxes, water rents and repairs, payment of interest which accrued on notes purchased as investments and payments to the beneficiary of the trust. These disbursements exceed the receipts showing that she has received more than the net income to which she was entitled. This excess was taken from the income of the main trust and should be refunded when the income of this trust allows. In view of this condition I have not stated any allowance of compensation to the trustees, leaving that for a future accounting and for the same reason I have not charged this trust with any part of the costs of this proceeding.

I have also enumerated in this Schedule the real and personal property comprised in this trust.

December 17th, 1900.

JAS. G. PAYNE, Auditor.

Declaration of Trust.

Whereas Eliza C. Magruder, Alexander F. Magruder, with Isabel Richardson Magruder (his wife), and John R. Magruder, with Kate M. C. Magruder (his wife), all of Washington, D. C. in the District of Columbia have conveyed to William A. Richardson of Cambridge in the County of Middlesex and Commonwealth of Massachusetts, Chief Justice of the Court of Claims at said Washington, by three deeds of even date herewith:

1. The old homestead estate of the late Dr. Hezekiah Magruder in Georgetown in said District.

2. A small estate in said Washington which they inherited from Mrs. Alice Downman as her heirs at law.

3. An estate in St. Louis, Missouri, which they inherited in like manner from Mrs. Downman.

And said Eliza C. Magruder has this day transferred to said Richardson 47 shares in the Georgetown Gas Light Company.

Now I said William A. Richardson hereby acknowledge that said property, real and personal, is conveyed to me in trust upon the following trusts:

1. I am to take care of the same, collect the rent, and income, pay taxes, insurance and repairs, collect the insurance money in case of damage by fire, and rebuild if I deem advisable, sell and convey the real estate in whole or in part for cash, or notes, at such times and in such manner as to me may seem best, sell said Gas Company

42 stock, with the consent of said Eliza, and reinvest the proceeds, to be held on the terms of this trust; and generally to change the investments from time to time of all property held under this trust as I may deem best, except that the sale of said Gas Company stock and the reinvestments of the proceeds thereof during her life shall not be made without the consent of said Eliza.

2. I am to pay over to said Eliza during her life time the net income of the whole trust estate, after deducting taxes, insurance, repairs, cost of collections and all other expenses and expenditures connected with the same, in quarter, annual, or monthly payments. I have already assigned to her the dividends and income of said Gas Company stock, and have given her an irrevocable power of attorney to draw in her own name all dividends thereon during her life time.

In case of emergencies and in my discretion or the discretion of any person or persons by whom these trusts may be executed such parts of the principal of the estate as may seem necessary may be paid over to said Eliza or used for her benefit.

3. At the decease of said Eliza, I am to convey, transfer or pay over all of the estate, real or personal, then belonging to this trust, and the investments and reinvestments thereof to the children of said Alexander F. Magruder then living and the issue of any deceased child by right of representation.

43 4. Upon my decease, all the trusts, powers, duties, obligations and discretions vested in me by said deeds and this declaration are to vest in and be executed by my executor or

executors or whosoever settles my estate in the same manner as they vest in me.

In witness whereof I hereunto set my hand and seal this ninth day of February in the year eighteen hundred and ninety-four.

Signed. WILLIAM A. RICHARDSON. [SEAL.]

We the parties in interest above named, hereby certify that the foregoing declaration of trust is correct and in accordance with our agreement.

Signed.

ELIZA C. MAGRUDER.
A. F. MAGRUDER.
JOHN R. MAGRUDER.
KATE M. C. MAGRUDER.

44

SCHEDULE A.

Account of Samuel A. Drury and Samuel Maddox, Trustees.

Dr.

To Principal personal estate received from the Executors as follows:

Household furniture and effects appraised at	3,710.00
Carriages, harness, &c. " "	750.00
34 shares of capital stock of the Northern Railroad Company	5,270.00
350 shares of capital stock of the Universal Car Coupler Company, value unknown	2,625.00
5 shares of capital stock of the Lowell Manufacturing Company	248,569.01
Promissory notes as per Schedule B (good)	
Promissory notes as per Schedule B (desperate)	
\$26,907.96.	
Cash	9,285.03
	<hr/>
	270,209.04

Cr.

By paid commission to executors allowed by Probate Court, Massachusetts	18,800.00
Paid notes secured by deed of trust of real estate	7,500.00
Paid indebtedness secured by deeds of trust, per Schedule F	21,316.57
Allowance to Samuel Maddox for services in suit of ejectment vs. Laura V. Stone et vir, 100.00, and for services as counsel in this proceeding	
250.00	350.00
Auditor's fees and costs for principal	300.00
Carried forward	<hr/>
	48,266.57

SCHEDULE A.

Account of Trustees Continued.

Dr.

To amount brought forward.....\$270,209.04

Cr.

By amount brought forward..... 48,266.57

\$221,942.47

Balance of principal April 30, 1900, as follows:

Household furniture and effects as originally appraised	3,710.00
Carriages, harness, &c., ditto.....	750.00
34 shares of capital stock of the Northern Railroad Company, ditto.....	5,270.00
35 shares of stock of Bigelow Carpet Company, ditto.....	2,625.00
Promissory notes per Schedule E.....	195,408.60
Cash	14,178.87
	<u>\$221,942.47</u>

Promissory notes, desperate, per Schedule Bb, \$26,907.96.
350 shares of capital stock of the Universal Car Coupler Company,
value unknown.

JAS. G. PAYNE, Auditor.

46

SCHEDULE A—Continued.

Statement of Real Estate Included in the Trust.

Lot numbered 26 in Square 71, No. 1112 New Hampshire Avenue.

Lot numbered 139 in Square 235, No. 1306 M Street, n. w.

Lots 12, 13 & 14 in Square 127, No. 1739 H street, n. w.

Lot lettered D in Square 211, No. 1424 Rhode Island Avenue.

Lots 41 and 42 in Square 107, No. 1824 and 1826 L street, n. w.

Lot numbered 140 in Square 235, No. 1308 W street, n. w.

Lot numbered 22 in Square 304, No. 2009 12th street, n. w.

Lot numbered 23 in Square 304, No. 2011 12th street, n. w.

Lot numbered 146 in Square 235, No. 2132 13th street, n. w.

Lot numbered 48 in Square 240, No. 1332 R street, n. w.

Lots 6, 7 and 21 in Square 550, Nos. 207 & 209 R street, n. w.

Lot 15, in Square 307, Vermont Avenue & R streets, n. w.

Lots 1, 6, 7, 8, 9, 17-24, Block 6, "Edgewood", Unimproved.

Lot 28 in Block 13, Le Droit Park, No. 322 Spruce street.

Lot 187, Mount Pleasant, No. 3042 14th street, n. w.

Lot 20 in Square 72, No. 2112 M street, n. w.
 Lot 33 in Square 388, No. 917 Desmond Alley, s. w.
 Lot 119 in Square 981, No. 814 Twelfth street, n. e.
 Lot 37 in Square 812, No. 443 Fourth street, n. e.
 Lot 71 in Square 887, No. 727 L street, n. e.
 Lot 14 in Square 966, No. 1007 Massachusetts Avenue, n. e.
 Lot 51 in Square 754, No. 520 Third street, n. e.
 Lot 197 in Square 855, No. 654 L street, n. e.
 Lot 25 in Square 676, No. 20 H street, n. e.

47

SCHEDULE A—Continued.

Property from which this Estate receives the Rental.
 Lot 33 in Square 943, No. 917 North Carolina Avenue, s. e.
 Lot 104 in Square 623, No. 47 Defrees street.
 Lot 51 in Square 937, No. 421 Ninth street, n. e.
 Lot 50 in Square 937, No. 419 Ninth street, n. e.

JAS. G. PAYNE, Auditor.

48

SCHEDULE Aa.

Note and Cash Accounts.

Note Account.

Received from Executors Schedule B.....	248,569.01
Notes purchased Schedule D.....	74,307.40
	<hr/>
	322,876.41
Notes paid Schedule C.....	127,467.81
	<hr/>
Notes on hand May 1, 1900, Schedule E.....	\$195,408.60

Cash Account.

Received from Executors.....	9,285.03
Notes paid.....	127,467.81
	<hr/>
	136,752.81
Notes purchased.....	74,307.40
Paid Executors.....	18,800.00
Paid trust indebtedness.....	7,500.00
Ditto Schedule F.....	21,316.57
For legal services.....	350.00
Auditor's fees.....	300.00
	<hr/>
	122,573.97
	<hr/>
Balance in hand.....	\$14,178.87

JAS. G. PAYNE, Auditor.

49

SCHEDULE H.

Account of the Eliza C. Magruder Trust.

Trustees' Account.

Dr.

To collection of note of Chas. H. Ruth.....	\$3,000.00
Ditto of note of same.....	2,300.00
	<hr/>
	5,300.00

Invested in —

Note of Ellen Curtin.....	2,000.00
Note of Daniel Twomey.....	3,300.00
	<hr/>
	\$5,300.00

Income.

Dr.

To Rents collected.....	970.67
Interest ditto.....	333.90
	<hr/>
	1,304.57

Cr.

By Taxes paid.....	245.13
Water rent paid.....	13.08
Paid accrued interest on note purchased....	86.33
Paid for repairs.....	42.78
Paid Eliza C. Magruder.....	972.94
Borrowed from income of main trust.....	55.69
	<hr/>
	\$1,360.26
	<hr/>
	\$1,360.26

Due Income of main trust, Schedule G, \$55.69.

50

SCHEDULE H.

Account of Eliza C. Magruder Trust Continued.

Principal Estate, April 30, 1900.

Real Estate.

Property in St. Louis, Missouri.

Premises No. 1121 Fifteenth street, northwest, in Washington,

D. C.

Premises No. 441, Franklin street, Washington, D. C.

Personal Estate.

Promissory note of Elen Curtin.....	2,000.00
Ditto of Daniel Twomey.....	5,300.00
	<hr/>
	5,300.00

47 shares of the capital stock of the Georgetown Gas Light Company subject to the power of attorney of Eliza C. Magruder to collect the dividends.

JAS. G. PAYNE, *Auditor.*

51 Some time in the early part of 1899, and before I was substituted as trustee under the will of Judge Richardson in the place and stead of his brother, I was consulted by Mr. Drury, the local executor, with regard to the collection of forty-eight notes for \$25. each, made by Laura V. Stone and William R. Stone, her husband, secured by second deed of trust on lot 15, in square 307, in this city. Before I was so consulted, the property had been offered for sale in accordance with the provisions of the deed of trust, and nominally purchased by Edward F. Caverly, a clerk in the office of Messrs. Arms & Drury. A deed was drawn conveying the property to Caverly. The Stones, husband and wife, declined to deliver possession of the property, and on the 24th of February, 1899, an action in ejectment was begun against them by Caverly as plaintiff. Pleas were entered to the action and issues joined on the 22nd of March. Owing to the delays necessarily incident to the trials of actions at law, it was deemed advisable to make an effort to secure the appointment of a receiver pending the trial. For this purpose, a bill in equity was prepared in the name of Mr. Drury and myself, I in the meantime having been substituted as trustee under the will of Judge Richardson, covering eight or nine pages. But owing to several causes, it was thought inadvisable to file the bill, because of rulings of the court in other similar cases.

Wherefore, we deemed it best to wait for a trial of the ejectment suit, which we hoped to secure in November or December. This,

52 however, did not occur until February 27, of the present year, when a trial was had before Mr. Associate Justice Bradley and a jury, resulting in a verdict for the plaintiff for the possession of the property and costs. A motion for a new trial was interposed, argued and overruled, and subsequently a writ of possession issued to the Marshal by whom it was executed later. The property in controversy is estimated to be worth from seven to eight thousand dollars.

For my services in this case, I ought probably to have a fee of \$100.

For conducting the proceedings in the present cause, I ought to have a fee of not less than \$250.

SAML. MADDOX.

53

Order of Reference to Auditor.

Filed January 15, 1909.

* * * * *

Upon motion it is this 15 day of January 1909 ordered that this cause be and it is hereby referred to the Auditor to state the account of the trustees herein as of date January 17, 1909.

By the Court:

JOB BARNARD, *Justice.**Petition of Alexander R. Magruder and Isabel R. Magruder.*

Filed June 16, 1909.

* * * * *

To the Supreme Court of the District of Columbia, Holding an Equity Court:

The petition of Alexander Richardson Magruder and Isabel Richardson Magruder respectfully represents:

I. William A. Richardson, deceased, late Chief Justice of the Court of Claims at Washington, D. C., by his last will and testament duly probated and of record in the Probate Court at Cambridge, Middlesex County, Massachusetts, and duly admitted to probate in and by the Supreme Court of the District of Columbia holding
54 a Probate Court on the 8th day of March, 1904, and of record in the Office of the Register of Wills for the District of Columbia, in Will Book No. 37, folio 334, made disposition of his estate, real and personal, and created certain trusts, and in and by the sixth clause thereof provided, that,—

“At the decease of my daughter the whole trust estate, including what remains of the original investments, real or personal, made by my executors, and all personal chattels not used up by my daughter in the maintenance of herself and her family, I give, bequeath and devise in equal shares to the children then living of my daughter, and the issue of any deceased child by right of representation, free and discharged from all further trusts, provided that one-half thereof shall be turned over to such child at the age of twenty-three years, and the other half at the age of twenty-six years, or as soon thereafter as, in either case, it may be called for, and that if either child dies while the property or any part of it is held in trust by not having been called for or otherwise, the share of such child shall go to the survivor or survivors in equal shares and the issue of any deceased child by right of representation on the same terms, and in case there is no survivor, then the whole shall go as provided in the next succeeding clause,”—

as will more fully and at large appear, reference being had to said last will and testament.

55

II. The daughter of said William A. Richardson, the testator, mentioned in said will, Isabel Richardson Magruder,

died on the 4th day of April, 1898, leaving surviving her as her sole heirs at law and next of kin, her only children, the petitioners, Alexander Richardson Magruder, who was born on the 17th day of January, 1883, and Isabel Richardson Magruder, who was born on the 20th day of April, 1886.

III. By a decree of this Court entered in this cause on the first day of April, 1899, reference to which is hereby made, and for the reasons therein stated, Samuel A. Drury and Samuel Maddox were appointed trustees to perform the duties created and imposed by said will, and were authorized and empowered to receive from the executors named in said will all the property whereof the decedent, William A. Richardson, died seized and possessed, as will more fully and at large appear, reference being had to said last will and testament.

IV. On the petition of the said Samuel A. Drury and George F. Richardson, the executors of said last will and testament, to the Judge of the said Probate Court at Cambridge, in the County of Middlesex, Massachusetts, in and by which said Court said last will and testament was approved and admitted to probate as aforesaid, said Probate Court on the 11th day of April, 1899, ordered and decreed that said Samuel A. Drury and George F. Richardson, executors as aforesaid, pay over the said trust funds and property of said estate to the said Samuel A. Drury and Samuel Maddox, trustees as aforesaid, as will more fully and at large appear from said order and decree, reference being had thereto.

V. Afterwards, to wit, on the 25th day of April, 1899, said executors filed in said Probate Court their first and final account which was approved by said Court on the day and year last aforesaid.

A copy of the inventory filed by said executors, and a copy of said account showing the property received and receipted for by said trustees, are filed herewith and made a part hereof and marked "Magruder Exhibit A" and "Magruder Exhibit B". Said trustees thereupon took into their possession the property and funds described in their receipt attached to said account.

VI. In and by the twelfth clause of said last will and testament, the testator, for the reasons therein fully set forth, nominated the petitioner, his grandson, Alexander Richardson Magruder, to be appointed by the Probate Court an additional Co-executor with the testator's brother and said Samuel A. Drury, when he should attain the age of twenty-one years, without sureties on his official bond.

When the petitioner, Alexander Richardson Magruder, became of age he made application to this Court to be appointed a co-trustee with the said Samuel A. Drury and Samuel Maddox, and by the order and decree of this Court entered on the 18th day of April, 1906, he was duly appointed "to act in connection with Samuel A. Drury and Samuel Maddox, heretofore appointed in this cause trustees in that behalf in the performance of the trusts created in and by the last will and testament of the late William A. Richardson", and gave bond as required by said decree.

Since the receipt by the said trustees of the property transferred and delivered to them under the order of said Probate Court of Middlesex County, Massachusetts, on the 25th day of April, 1899,

as aforesaid, said trustees, Drury and Maddox, have had the possession, management and control of the assets and property of said estate.

The petitioner Alexander Richardson Magruder has had as trustee no active participation in the management thereof nor in the execution of the aforesaid trusts.

Said trustees, Samuel A. Drury and Samuel Maddox, have, from time to time, filed in this Court their accounts,—five in number,—which have been referred to the Auditor and passed upon by him, and there is now before the Auditor their sixth account which is now under consideration by the Auditor.

VII. The petitioner Alexander Richardson Magruder attained the age of twenty-three years on the 17th day of January, 1906, and then became entitled, under the terms of his grandfather's said will, to receive from said trustees and to have and to hold in his own right one-fourth part of the assets and property constituting said estate, but he made no request therefor and allowed the same to remain in the custody and management of said trustees.

The petitioner Alexander Richardson Magruder attained the age of twenty-six years on the 17th day of January, 1909, and then became entitled, under the terms of the aforesaid last will and
58 testament of his said grandfather, to have turned over to him one-half of said estate and of all the property and funds constituting the same, and he thereupon and before said 17th day of January notified said trustees, in writing, that he desired to have his proportion of said estate at once transferred and conveyed to him.

VIII. The petitioner Isabel Richardson Magruder attained the age of twenty-three years on the 20th day of April, 1909, and thereupon became entitled, under the said will of her grandfather, to have turned over to her one-half of one-half of the said estate and of all the property and funds constituting the same, and thereupon and before said 20th day of April, 1909, notified said trustees, in writing, that she desired to have her said proportion or part of said estate at once turned over, transferred and conveyed to her.

IX. The said trustees, Samuel A. Drury and Samuel Maddox, have made and presented to the petitioners a paper writing headed,—
“List of assets comprising Estate of William A. Richardson, deceased, in possession of Samuel Maddox and Samuel A. Drury, trustees, January 17th, 1909,” which is hereto attached and marked
“Magruder Exhibit C”.

The properties described in the said statement or schedule so made by said trustees, as aforesaid, have been classified and enumerated in the paper or table filed herewith and marked “Magruder Exhibit D”, under the following headings:

- (1) Notes, supposed to be good and well secured;
- (2) Realty, (the title to which is supposed to be good);
- 59 (3) Stocks, (supposed to be good);
- (4) Property to be held jointly by Alexander R. and Isabel R. Magruder.

Under this last heading are included notes of uncertain value, a

farm in Maryland, the family residence on "H" Street, in the City of Washington, D. C., and certain securities of no present value.

With the friendly aid of Mr. John A. Baker and Mr. Arthur D. Addison valuation has been made of each of the properties described in said paper marked "Exhibit D", which is believed to be substantially and approximately correct, provided the title to the real estate is good and the security sufficient, and all the properties under the headings, (1) Notes, (2) Realty, and (3) Stocks, have been separated and divided into two allotments or lists, designated in said "Exhibit D", respectively, as Allotment A and Allotment B, and one of said allotments contains and describes properties as nearly equal in value as practicable to the value of the properties described in the other of said allotments.

All the other properties described in said "Exhibit D" are therein designated as "To be held jointly" by the said Alexander R. and Isabel R. Magruder.

The total of the valuation of the properties contained in said allotments and placed under said headings (1) Notes, (2) Realty, and (3) Stocks, is \$204,701.71.

The total valuation of all other properties, described in said "Exhibit D" under heading (4) "To be held jointly", is
60 \$56,500.00.

The total valuation of all the properties described in said "Exhibit D" is \$261,201.71.

Under the terms of the last will and testament of the said William A. Richardson, deceased, one-fourth part of the properties described in the aforesaid statement made by said trustees is to be held trust until the petitioner Isabel R. Magruder attains the age of twenty-six years, and one-fourth part thereof should now be turned over to her and one-half thereof should now be turned over to the said Alexander R. Magruder by said trustees.

One-fourth of the fair valuation of all the properties described in said statement of said trustees is \$35,300.42, being one-fourth of said sum of \$261,201.71.

X. The petitioners, each acting for himself and herself, respectively, have, with the advice of the said John A. Baker and Arthur D. Addison and with the approval of said trustees and subject to the approval of this Court, agreed upon and elected to make the following division and distribution of the properties described in said statement, Exhibit C and Exhibit D, that is to say:

(1) The petitioner, the said Alexander R. Magruder, is to have turned over to him, and properly assigned and conveyed to him, all the notes and pieces of ground and stocks described and enumerated in said Allotment B.

(2) There shall be held in trust under the terms of the said last will and testament of the said William A. Richardson, deceased, by the said trustees or by a trustee or trustees to be appointed
61 by the Court in their stead, all the notes described and enumerated in said Allotment A, amounting to \$63,442.62, and also of the pieces and parcels of land therein described those two pieces or parcels described as sub-lot 104, in Square 623, in the

City of Washington, D. C., and lot 9, in the sub-division of land known as "Edgewood", in the District of Columbia, being item 71 and included in item 72, respectively, in the said statement of said trustees, the valuation of the said pieces or parcels of land being the sum of \$1,800.00, which sum added to the valuation of said notes \$63,442.62, makes the sum of \$65,242.62, which said last mentioned sum is within \$57.80 of \$65,300.42, or the valuation of one-fourth of all the funds and property comprising said estate, and which is to be held subject to and under the trust created by said last will and testament.

(3) The said petitioner Isabel R. Magruder is to have turned over and conveyed to her, or as she may direct, all the other pieces and parcels of land and property described in said Exhibit D under the heading Allotment A.

(4) There shall be turned over and conveyed to the said Alexander R. Magruder and Isabel R. Magruder all the pieces and parcels of land and property of every kind described in said Exhibit D, under the heading "To be held jointly", to be held by them as tenants in common, each having an equal interest therein.

The circumstances as to the valuation of said properties, and the agreement and election of the petitioners as to division thereof,

are shown by the papers filed herewith and marked "Magruder Exhibits E, F and G".

XI. The petitioners are informed that said trustees Samuel A. Drury, Samuel Maddox and Alexander R. Magruder are willing and prepared to turn over and convey the said properties as herein indicated and provided and to resign from and be divested of the trusts, powers and title imposed upon or vested in them under the said last will and testament and the aforesaid order of this Court so far as the same relate to and affect the notes and the said two pieces or parcels of land aforesaid, and that the American Security and Trust Company may be made and substituted in their place and stead as trustee to hold and execute said trusts in respect of said notes and pieces of land in accordance with the requirements of said will and testament.

The petitioner Isabel R. Magruder, by an indenture bearing even date with this petition, has conveyed to the American Security and Trust Company, trustee, in trust and upon the trusts therein set forth, all her right, title and interest in and to all the properties described in said Allotment A.

Wherefore the Petitioners pray:

First. That the said trustees Samuel A. Drury, Samuel Maddox and Alexander R. Magruder may be authorized and directed to set over, assign, transfer, convey and deliver to the said Alexander R. Magruder, by proper endorsements and conveyances, all the trust funds and property described in said Exhibit D under the heading Allotment B.

Second. That the American Security and Trust Company may by this Court be appointed trustee in the place and stead of the said Samuel A. Drury, Samuel Maddox and Alexander R. Magruder in respect of and for the said notes described in said

Exhibit D under the heading "Allotment A", and in respect of the pieces and parcels of land and premises hereinbefore described, to wit, sub-lot 104, Square 623, Washington, D. C., and lot 9 in Edgewood, in the District of Columbia, to hold the same under and for the purpose of executing the aforesaid trusts imposed by the last will and testament of the said William A. Richardson, deceased, and the aforesaid order of this Court, in respect of the fourth part of said estate.

Third. That the said trustees Samuel A. Drury, Samuel Maddox and Alexander R. Magruder may be authorized and directed to turn over, assign, transfer, convey and deliver to the petitioner Isabel R. Magruder, or as she may direct, all the pieces and parcels of land and properties described in said Exhibit D under the heading "Allotment A", except the said notes and the two pieces and parcels of land, hereinbefore described, to her sole use.

Fourth. That the said trustees Samuel A. Drury, Samuel Maddox and Alexander R. Magruder may be authorized and directed to turn over to the said petitioners Alexander R. Magruder and Isabel R. Magruder, as tenants in common, all the notes, property and real estate described in the aforesaid paper or schedule marked "Exhibit D", under the heading (4) "To be held jointly".

64 Fifth. That this cause may be retained in this Court for the purpose of having stated and settled the accounts of said trustees and each of them, and of having ascertained and determined what is justly due said trustees for compensation and commissions, and what, if anything, is due said estate, and what property, if any, still remains in the possession of said trustees, and not disposed of, and in order to make such other and supplemental decrees as may be found necessary to fully execute said last will and testament.

ALEXANDER R. MAGRUDER.
ISABEL R. MAGRUDER.

NATH'L WILSON,
C. R. WILSON,
Solicitors for Petitioners.

DISTRICT OF COLUMBIA, ss:

Alexander Richardson Magruder and Isabel Richardson Magruder, being first duly severally and separately sworn, severally and separately depose and say that they have read the foregoing and annexed petition by them subscribed and know the contents thereof; that the facts therein stated as of their own knowledge are true, and those stated upon information and belief they believe to be true.

ALEXANDER R. MAGRUDER.
ISABEL R. MAGRUDER.

Subscribed and sworn to before me this tenth day of June, A. D. 1909.

[SEAL.]

E. L. WHITE,
Notary Public in and for the District of Columbia.

(Here follows statement marked pp. 65 and 66.)

MAGRUDER EXHIBIT "D"
to the petition of Alexander R. and Isabel R. Magruder
IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

ALEXANDER R. MAGRUDER et al)
 v. ;
SAMUEL A. DRURY) EQUITY NO. 20,037.

Disposition of Assets
reported by trustees as constituting the Estate of Wm
son, deceased, made with reference to a division into
parts to devisees.

(1). NOTES. - - If all are secured under 1st

Allotment A.

1. Aquila, G., 2 notes \$500 each - -	\$1,000	Dr
3. Brown, Lee, 1 note- - - - -	2,000	Br
2. Brewer, M. B., 1 note - - - - -	500	Gr
6. Daingerfield, W. B., 1 note - - -	3,000	Ir
18. King, C. W., Jr. 2 for 1,000 &		Gr
2 " 500- - -	3,000	Ir
10. Groff, D.B., 3 notes-2,500 each -	7,500	Hc
11. "		
13. Int. Paid on 2 notes to Aug. 1		Ht
& on 1 note to Oct. 2, 1908.		Kt
20. King, C. W., Jr. 1 note- - - - -	15,000	
† 25 Morrissey, E., 9 notes-10. each -	90	Mc
27. Palmer, W. J., 1 note-2,000 &		Ki
1 " 500 - -	2,500	Ma
30. Payne, J. C. 1 note - - - - -	1,900	Ke
31. Richold, L. 1 note - - - - -	5,000	Pa
† 33. Robinson, Jane, 6 for 500. each	3,000	Pa
22. Lowery, G. C. 3 notes, 2 for		Ri
1,000-each & 1 for 500.- - -	2,500	Ro
41. Wardman, H. 4 notes of 1,000. -	4,000	Wa
part 38 (" " 3 " 1 " 2,000 &		
& all 39. (" " 2 " 500. -	3,000	
42. " " 4 " " 1,000 -	4,000	
43. " " 4 " " 1,000 -	4,000	
Int. accumulations to Apr. 1 -	452.62	Int
part 73. 2 notes of Merriwether-500. - -	1,000	
	<u>\$63,442.62</u>	2

agruder.

MBIA.

Wm. A. Richard-
into two equal

t mortgage.

Allotment B.

Draper, W. A., 1 note - - - - -	\$2,000	7.
Engler, M. R., 1 note - - - - -	1,000	8.
Groff, D. B., 1 note - - - - -	2,500	14.
Int. Paid to Aug. 1, 1908.		
Groff, D. B., 1 note - - - - -	2,000	12.
Int. Paid to Oct. 2, 1908.		
Holman, B. W., 1 note - - - - -	2,500	16.
Hubbard, V.M., 1 note - - - - -	1,750	17.
King, C. W., Jr., 4 notes, 2 for 1,000 & 2 for 500	3,000	19.
Morrissey, E., 9 notes-10. each- -	90	$\frac{1}{2}$ 25.
King, C. W., Jr. 1 note - - - - -	15,000	21.
Mazzie, F. A. & E. 1 note - - - - -	4,000	24.
Newton, C. P. 1 note - - - - -	750	26.
Palmer, W. J. 2 notes-2,000.- - -	4,000	28
Palmer, W. J. 2 notes- 500.-	1,000	29.
Richold, L. 1 note - - - - -	4,000	32.
Robinson, J. 6 for 500.- - - - -	3,000	$\frac{1}{2}$ 33.
Sardman, H. 3 notes of 1,000.- - -	3,000	35.
" " 2 " " 2,000 &) 38 & 40. 4,500)	
1 " " 500 -		
" " 4 " " 1,000 -	4,000	36 & 37.
" " 4 " " 1,000 -	4,000	44.
Int. accumulations to Apr. 1 -	406.61	

(2). REALTY - - - (if title clear)

Allotment A.

55.	Sub. lot 20, Sq. 72, (No. 2112 M St., N. W.) - -	\$4,500.00
59.	Sub. lot 48, Sq. 240, (No. 1332 R St., N. W.) - -	6,000.00
61.	Sub. lot 141, Sq. 235, (No. 1308 W St., N. W.) - -	3,500.00
63.	Sub. lot 22, Sq. 304, (No. 2009-12th St., N. W.) -	3,500.00
66.	Sub. lot 14, Sq. 966, (No. 1007 Mass.Ave., N.E.) -	3,500.00
69.	Lot 187, Spalding's Subdivision of Pleasant Plains, (3042-14th St., N. W.) - -	6,000.00
70.	Sub. lot 28, Block 13, Le Droit Park, (322 J St., N. W.) - - - -	2,750.00
71.	Sub. lot 104, Sq. 623, (47 Defrees St., N.W.) - - -	1,500.00
pt. 72.	(Lot 16, Edgewood - - - - -	673.45
	(Lots 6 & 7, Edgewood - - - - -	600.00
	(Lot 9, Edgewood- - - - -	300.00
	(Lots 18-19-20, Edgewood- - - - -	1,357.02
		<u>\$34,180.47</u>

(3). STOCKS.

½ 47.	17 Shares Northern R. R. Co.	
	at \$147- - - - -	2,499.00
pt. 48.	18 Shares Bigelow Carpet Co.- -	2,250.00
		<u>\$38,929.47</u>

JNO. A. BAKER

Allotment B.

lot 26, Sq. 71, (No. 1112 N. H. Ave., N. W.)- - -	\$4,500.00	54.
inal lot 15, Sq. 28, (S. W. cor K & 25th Sts. N. W.)- -	2,926.70	56.
lot D, Sq. 211, (1424 R. I. Ave., N. W.)- - - -	7,000.00	58.
lot 140, Sq. 235, (1306 W St., N. W.)- - - - -	3,500.00	60.
lot 146, Sq. 235, (2132-13th St., N. W.)- - - - -	4,000.00	62.
lot 23, Sq. 304, (2011-12th St., N. W.)- - - - -	3,500.00	64.
sub. lot 33, Sq. 388, (13 x 61.50 ft.) (917 Desmond Alley, S. W.)- - - -	500.00	65.
sub. lot 119, Sq. 981, (East 80 ft. by front) (814-12th St., N. E.)- - - - -	2,500.00	67.
lot 50, Sq. 937, (419-9th St., N. E.)- - - - -	3,000.00	68.
, Edgewood - - - - -	673.45	} pt. 72.
, Edgewood - - - - -	300.00	
21-22-23-24, Edgewood- - - - -	1,809.36	
	<u>\$34,209.51</u>	

ares Northern R. R. Co.

at \$147- - - - -	2,499.00	$\frac{1}{2}$ 47
ares Bigelow Carpet Co.- - - - -	2,125.00	pt. 48
	<u>\$36,833.51</u>	

67

(4.) TO BE HELD JOINTLY.

Notes.

	Face value.	Valuation.
4. Brown, Lee, 2 mortgage.....	\$1,400.	\$500
On list as \$1,387. Subject to \$2,000.		
1st mortgage.		
9. Groff, D. B., doubtful.....	2,000.	} 2,500.
15. " " " ".....	5,440.	
23. McLeran, insufficiently secured.....	3,500.	2,500.
34. Stein, 2nd mortgage, subject to \$2,500.		
trust, value 2,750.....	1,232.	500.
5. Crowley.....	500.	500.
45. Worthless (Herr).....	140.	000.
46. " (Thompson).....	10.	000.
Total.....	\$14,222.00	\$6,500.00

Other Property.

57. 1739 H Street.....	35,000.
74. Araby Farm.....	15,000.
49. 10 Shares Florida Coast Line Railroad.....	000.
50. 9 Bonds Florida Coast Line Railroad.....	000.
51. 1 Certificate indebtedness Florida Coast Line Rail- road.....	000.
Total.....	\$50,000.00

JNO. A. BAKER.
ARTHUR D. ADDISON.

68

Decree for Partial Distribution.

Filed July 9, 1909.

On considering the petition of Alexander Richardson Magruder and Isabel Richardson Magruder, parties in this cause who have signed said petition by the names of Alexander R. Magruder and Isabel R. Magruder, and the exhibits attached thereto this day filed, and the answers of the trustees it is this 9th day of July, in the year one thousand nine hundred and nine, by the Court in Equity sitting, adjudged, ordered and decreed:

First. That the said Alexander R. Magruder, having attained the age of twenty-six years on the seventeenth day of January, in the year nine hundred and nine, thereupon became and is entitled, under the provisions of the last will and testament of his grandfather, William A. Richardson, deceased, to one equal share or half of the estate of the said testator, and the said Samuel A. Drury, Samuel Maddox and Alexander R. Magruder, trustees heretofore

appointed by this Court to execute the trusts created by said will, be and they are hereby authorized and directed to turn over, endorse, assign, transfer, convey and deliver to the said Alexander R. Magruder all the promissory notes, securities, pieces of ground and premises and the proceeds thereof, except as hereinafter provided, described in the schedule and exhibit Magruder Exhibit D under the heading "Allotment B", filed with and referred to in the aforesaid petition,

it being agreed by all the parties to this cause that said
 69 promissory notes, real estate and other property described under said Allotment B constitute in value one equal part or half of the property described in the statement made by said trustees, referred to in said petition as "Magruder Exhibit C", and it being also agreed that the division and apportionment of the trust funds and property described in said statement "Magruder Exhibit C" shall be made as stated in said "Magruder Exhibit D".

Second. That the said Isabel R. Magruder, having attained the age of twenty-three years on the twentieth day of April, in the year nineteen hundred and nine, thereupon became and is entitled, under the provisions of the last will and testament of her grandfather, the said William A. Richardson, deceased, to one-fourth part or share of the said estate, and the said trustees, heretofore appointed as aforesaid, be and they are hereby authorized and directed to turn over, endorse, assign, transfer, convey and deliver to the said Isabel R. Magruder, or as she may direct, all the pieces or parcels of ground and premises, securities and other property and the proceeds thereof, except as hereinafter provided, described in said schedule and exhibit marked Magruder Exhibit D under the heading "Allotment A", (excepting, however, the notes and the two pieces or parcels of ground included therein described as sub-lot 104, in Square 623, in the City of Washington, D. C., and lot 9 in Block 6 in the subdivision of land known as "Edgewood", in the District of Columbia), it being agreed by all the parties to this cause that all the real estate

and securities described in said Allotment A, together with
 70 one-half of the property hereinafter described and directed to be conveyed to the said Alexander R. Magruder and the said Isabel R. Magruder to be held jointly by them, constitute in value one-half part of the estate of the said William A. Richardson, deceased, described and enumerated in the said statement so made by the said trustees as of January 17, 1909, and marked "Magruder Exhibit C".

Third. That it appearing by the said will and testament of the said William A. Richardson, deceased, that as to the other one-fourth part of said estate which the said Isabel R. Magruder is not entitled to receive until she attains the age of twenty-six years, and that in the meantime said one-fourth part of said estate is to be held in trust under the conditions imposed by said will, and it appearing from the answer of the said trustees that they are willing and desire that they may be relieved and discharged from said trusts so far as they relate to said one-fourth part of said estate, as hereinbefore defined and described, and that the American Security and Trust Company of Washington, D. C., may be appointed trustee in their place and

stead, and that the petitioners desire that such substitution of trustees be made by this Court, the said American Security and Trust Company, of Washington, D. C., be and it is hereby made, constituted and appointed trustee in the place and stead of the aforesaid trustees to execute, carry out and perform the trusts created and imposed by the last will and testament of the said William A. Richardson, deceased, in respect of and so far as the same relate to

71 the one-fourth part of said estate and property particularly described and enumerated in said schedule or exhibit marked "Magruder Exhibit D", and under the heading Allotment A, and consisting of the promissory notes therein described, amounting to sixty-three thousand four hundred and forty-two dollars and sixty-two cents (\$63,442.62), and the proceeds thereof, except as hereinafter provided, and the two pieces or parcels of land known as subplot 104 in Square 623, Washington, D. C., and lot 9 in Block 6, in the sub-division of land known as "Edgewood" in the District of Columbia, and in respect of any other property, land, money or securities that may hereafter be ascertained and determined to belong or to be a part of said one-fourth part or interest in said estate which is to be held in trust under the provisions of said will, to hold the said promissory notes and the proceeds thereof and the said pieces or parcels of land in and upon the trusts created and imposed thereon by the provisions of the said last will and testament of the said William A. Richardson, deceased, and the said trustees Samuel A. Drury, Samuel Maddox and Alexander R. Magruder are hereby divested of all right, title and interest in and to said promissory notes and the proceeds thereof and the said pieces or parcels of ground, and in and to all property and moneys that may hereafter be found to constitute or belong to said one-fourth part of said estate, and the right, title and interest therein and thereto is hereby vested in the said American Security and Trust Company

72 to hold the same as trustee in and upon the trusts as aforesaid, it being agreed by all the parties hereto that said promissory -- and said pieces or parcels of ground are to be fairly considered as constituting one-fourth part in value of the said estate as described in said statement Magruder Exhibit C as of January 17, 1909.

The said Samuel A. Drury, Samuel Maddox and Alexander R. Magruder, trustees as aforesaid, are hereby authorized and directed to endorse, assign, transfer, convey and deliver to the said American Security and Trust Company, submitted trustee as aforesaid, by such endorsements, transfers and conveyances as may be necessary, the aforesaid promissory notes and the proceeds thereof and said pieces or parcels of land to be held by said substituted trustee upon the trusts aforesaid.

Fourth, That the said Samuel A. Drury, Samuel Maddox and Alexander R. Magruder, trustees as aforesaid, are hereby authorized and directed to endorse, assign, transfer, convey and deliver, by proper conveyances and deeds, to the said Alexander R. Magruder and Isabel R. Magruder, as joint owners and tenants in common, the stocks, notes and property described in the said Magruder Exhibit

commissions and the costs of court, and what, if anything, is due said estate from them and what property, if any, belonging to said estate remains in the possession of said trustees and not disposed of by this decree and in order to receive, consider and pass upon the accounts of the trustee hereby appointed in respect of the property and that part of said estate which is to be held in trust until the petitioner Isabel R. Magruder attains the age of twenty-six years and to make such other supplemental and final decrees as may be required and found necessary for the settlement of said estate and the final determination of this cause, this cause is retained in this court and remains subject to the further orders and decrees that the court may find it necessary to enter herein.

JOB BARNARD, *Justice*.

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Order Referring Cause to Auditor.

Filed February 3, 1910.

* * * * *

It appearing to the Court that the late Auditor of the Court made no report herein, under the order of reference passed on the 15th day of January, 1909, it is, on motion of the trustees, this 3rd day of February, 1910, ordered that this cause be, and it is hereby, referred to the Auditor to state the final account of the trustees and the distribution of the trust estate in their hands, and report such commission or compensation to the trustees as may be appropriate and proper; also to state the account of said trustees in respect of what is known as the "Eliza C. Magruder trust".

By the Court:

THOS. H. ANDERSON.

Auditor's Report.

Filed March 16, 1910.

* * * * *

This cause was referred to the Auditor by two separate orders, one of January 15, 1909, directing the statement of the trustees' account as of January 17, 1909, and the order of date February 3, 1910, directing me to "state the final account of the trustees and the distribution of the trust estate in their hands, and report such commission or compensation to the trustees as may be appropriate and proper; also to state the account of the said trustees in respect of what is known as the Eliza C. Magruder trust".

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The reference was duly proceeded with by my predecessor in office, a number of hearings being had, and some testimony taken before him, and a Sixth and Sixth Supplemental accounts, together with some exhibits being filed with him. Among the exhibits so filed are five papers; one a "list of assets" of the estate, which I have marked "Auditor's Exhibit No. 1"; another a résumé of the

items of principal estate shown by the Auditor's previous reports in this cause, corrected according to the trustees' view, upon which they claim commission should be based; which paper I have marked "Auditor's Exhibit No. 2"; another containing a very full statement of the services of the trustees in connection with the trust, and a corrected or revised statement of the "Auditor's first account as they claim it should have been made (which revision or correction was made in pursuance of an apparent understanding by counsel on both sides at that time, that the said account would be opened, and which will be adverted to later), which paper I have marked "Auditor's Exhibit No. 3"; another, a statement of the monies of the trust converted into realty, which I have marked "Auditor's Exhibit No. 4"; and lastly a statement of the objections to the trustees' claims of commissions, which I have marked "Auditor's Exhibit No. 5". As to the dates of filing these papers, the

77 only record I find is in "Auditor's Exhibit No. 5", as to Auditor's Exhibits Nos. 2, 3, and 5, and in a letter from Mr. Maddox to the Auditor respecting No. 4. The dates, as so ascertained, are noted on the respective papers. I return herewith the testimony and exhibits noted therein; statements of account by the trustees and the exhibits before mentioned; exhibits filed with me; and, hereto annexed, the Schedules showing the accounts of the trustees as stated by me.

Whatever else may have been contemplated in the recent proceedings in this cause, the present reference outside of the usual and proper audit of the accounts of the trustees here submitted, resolves itself into a controversy as to the proper allowances to be made to the trustees on final accounting, for their services in the execution of this trust, by way of commissions or otherwise. In the previous reports of the Auditor, five in number, they have been uniformly allowed ten per cent on the net income received by them, and five per cent on certain receipts of principal estate, being proceeds of realty sold by them. In the present audit, which will terminate their trust, they claim the same allowances and five per cent upon the body of the estate upon which they have received no commissions, consisting of the notes, stocks and cash received by them from the executors, and certain sales of real estate (see testimony pages 3-6), and ten per cent on the income. The trustees waive any claim to commissions on the household effects, carriages, etc., appearing in their accounts, and also on the value of the real estate originally received by them and not sold, but remaining in the trust.

78 For the purpose of eliminating preliminary to my final conclusions (as to reasonable allowances to the trustees for their services) certain of the points in controversy in the reference, I shall first take up the objections to the claims of the trustees, "Auditor's Exhibit No. 5".

The first objection is to the credit of \$18,800 allowed to the executors, in way of commissions on their final accounting.

With respect to this item the facts are that the allowance was made by the Probate Court of Middlesex County, Massachusetts, in

the final account of the executors, as will be seen by reference to "Magruder Exhibit B", accompanying the petition filed in this cause June 16, 1909; and that the allowance was also made by the Auditor of this Court in his first report filed December 19, 1900. The controversy over this item developed the fact that the account in the Probate Court in Massachusetts was settled as of April 24, 1899, when the estate was turned over to the trustees, while the account of the trustees in the first report of the Auditor began on April 1, 1899, the date of the appointment of the trustees by this Court, an overlapping period of twenty-four days; hence the appearance of the item by error in both accounts. The effect of this error was not in any way to disturb the actual debit and credit status of the estate account, which was kept by Mr. Samuel A. Drury, one of the executors as well as one of the trustees, in a continuing form (see testimony pages 12 and 16), or to cause a double allowance.

By reason of the objection on the one hand and because of the desire of the trustees to have the first account of the Auditor reformed in order to arrive at the facts with respect to the exact amount of principal estate turned over to the trustees, the tacit understanding appears to have been arrived at by counsel that the account should be reopened, and in pursuance therewith, as stated, was filed Auditor's Exhibit No. 3. My conclusion with respect to this objection, of which I informed counsel (upon my preliminary survey of the pleadings, the Auditor's reports, and proceedings before the Auditor in this reference, including the briefs filed), was that I had no authority to open an account of the Auditor confirmed by the Court without the specific direction of the Court; that therefore neither would I reform the Auditor's first account or pass upon the propriety of the allowance to the executors. It seems to me, also, that even if I could or would reopen the Auditor's report, the allowance by the Massachusetts Court could not be reviewed by this Court, which has no jurisdiction of the Executors or their accounts.

At the same time it was manifest in an estate of this size, where the transactions were so numerous, the securities and other items of account were shifting daily during this overlapping period of twenty-four days, including the final settlement in Massachusetts, and this payment to the executors, and that some method would have to be determined upon to ascertain the principal of the estate received by the trustees on the 24th of April, for the purpose of fixing the commissions. This will be treated of later in the report.

It should be stated that in the course of the reference 80 counsel for the *cestuis que trust* shifted his position on this item to the claim that it be taken into consideration, without actually opening the report of the Auditor, in determining a reasonable allowance to the trustees.

The second objection is to the credits for payment made to Samuel Maddox, trustee, for professional services rendered after his appointment. From examination of the record, more particularly Exhibits S. M. #3 and S. M. #5, the testimony at page 59, and the Auditor's reports filed December 19, 1900 (Schedule A) and Feb-

ruary 21, 1906 (Schedule G), it would appear that the allowances to Mr. Maddox were for services rendered previous to his appointment, in connection with the filing of the bill in this proceeding on behalf of the beneficiaries of the trust and with certain suits brought by the executors; except as to the item of \$200 allowed in the Auditor's report of February 21, 1906, which was for a suit to quiet title to certain real estate. Outside of the answer to this objection like to the other, that the allowances have been previously made by the Auditor, and confirmed by the Court, I do not regard them as improper; the charges were reasonable and it is not unusual to allow trustees, who are members of the bar compensation for professional services rendered, which are not ordinarily within the scope of their duties as trustees. The trustees, however, consent and request that this latter item of \$200 be sur-charged, and I have acted accordingly.

81 The third objection is to the credits for payments of commissions paid to agents, for the collection of rents, in the third, fourth and fifth reports of the Auditor; and similar payments reported by the trustees in this audit. The same conclusion with respect to my authority to sur-charge the previous allowances of the Auditor would apply to these items. Beside, I am inclined to the view that they were not unreasonable after contemplation of the history of this case, and would, in the absence of objection, and perhaps over objection, have made the same allowances in this audit. The trustees, however, consent that the expenditures for that purpose in this account be not allowed and that the previous allowances of the same character be sur-charged, and my Schedules are framed accordingly. For the purpose of making the account more perspicuous, I have allowed the expenditure in the general income account in this audit, but have sur-charged it in the Schedule setting out the allowances to the trustees. It is proper that I should call attention to a difference in this item between the amount reported by the trustees and the amount found in my Schedules. This difference is the result of my examination of the books of the trustees, which show that the amount reported by them as paid agents was incorrect, in that it appeared to be the total of their ledger "expense" account which included the sum of \$82.00 not paid to agents, but for other items, to wit: \$12.00 for repairs, \$20.00 for bond of A. R. Magruder as associate trustees, and \$50.00 for rentals of the trustees' safe deposit box. The first and last items are allowed in the account under their proper heads; the second one I 82 have disallowed; and I reduce the credit of total amounts paid to agents by the sum of the three, making the sur-charge of the corrected amount accordingly.

The fourth objection is to the allowance to the trustees of ten per cent (10%) on income.

The fifth objection is to the allowance to them of five per cent (5%) on sales of realty, including the allowances at that rate made in previous reports of the Auditor.

The sixth objection is to the allowance to them of five per cent (5%) on the principal estate turned over to the beneficiaries, either

on the securities in the personal estate or on the sum total of personal estate converted into realty. These three objections will be treated of in my final conclusions in this report later on.

The seventh objection is to the allowance of \$849.98 to the trustees in the third report of the Auditor, being ten per cent on certain desperate debts reported as collected, but which, it appears, were not actually collected, being merged into a real estate transaction. The objection is nugatory, however, because I find upon examination that though the allowance was reported by the Auditor at the conclusion of one of his Schedules, it was not actually credited in the Schedule in that or any subsequent report, and credit for it has never been claimed or taken by the trustees.

The eighth objection is to the "retention by Arms & Drury" of profits realized by them on trust notes which they sold to the trustees, and insurance placed by them for the trustees.

83 The item of commission on insurance appears to be small (testimony page 59) while the other item would be considerable in amount (testimony pages 8, 27-9, 35, 33, 43-4). It would appear from the testimony (pages 8-9, 25-33, 43-4, 51-2, and 59) that the real contention of counsel is that the trustees should be surcharged with these profits. Subsequently, however, in the argument, counsel shifted his contention to the claim that the Auditor, in arriving at his final conclusions with respect to the reasonable allowance to the trustees, take into consideration the profits and advantage resulting to Mr. Drury from his transactions with respect to these notes by reason of the relation of his firm to himself as trustee, more particularly in the opportunities afforded him to make ready and desirable sales of these notes. The fact clearly appears from the testimony that Arms & Drury as real estate brokers, made loans on trust notes, upon which loans they were paid by the borrowers a commission ranging from one to two per cent, according to the circumstances of the case, many being building loans; that subsequently as notes of the trust estate were paid off Mr. Drury would reinvest the monies of the estate in trust notes held by Arms & Drury, paying the face value and accrued interest on the notes so purchased; and that Arms & Drury placed the insurance for the trustees, upon which they were paid the usual brokerage commissions by the Insurance Companies.

I see no force in any of these various contentions of counsel that the employment of Mr. Maddox in professional matters, 84 or the employment of the firm of Arms & Drury to collect rents, and place insurance, or that the sale by Arms & Drury of trust notes to the trustees, have any bearing on the question here presented for determination and report. The customs with respect to these transactions are so well known and so well fixed that it might perhaps be well claimed the Court may take judicial notice of them. For these purposes other counsel, if not Mr. Maddox, would necessarily have been employed; other agents, if not Arms & Drury, would properly have been applied to for insurance; other individual brokers, if not Arms & Drury, or banks, would necessarily have been applied to for investments. It appears from the testimony that nothing was done out of the usual and proper course

in these transactions by reason of the individual relations of Mr. Maddox or Mr. Drury to themselves as trustees. For the collections of rents the usual and proper commissions were paid; for the placing of insurance the usual and proper commissions were paid by the insurance companies; for the notes purchased by the trustees the amounts paid were invariably the face of the note and accrued interest. No profit was made by the firm of Arms & Drury on the sales of the notes to the trustees, (testimony page 52). The transactions of Arms & Drury with the trustees were in the regular course of their business, in which they had their own monies invested. They cost the estate not a penny more than if the transactions had been with some other firm or individual. If the firm of Arms &

85 Drury, out of their own monies, made loans on promissory notes, upon which loans were paid by the borrower the customary brokerages, those were profits on their own funds, in which this estate could have no interest, and in which it could acquire no interest by reason of the subsequent purchase of those notes by the trustees for their real value, any more than could any of the purchasers of such notes from Arms & Drury claim such an interest. No charge of malfeasance or misfeasance is made against the trustees or that by reason of these transactions the trustees benefited in any manner out of the money of this estate. On the contrary, the relation of the firm of Arms & Drury to Drury and Maddox, trustees, benefited the estate, by enabling the trustees at all times to make immediate re-investment of its funds, without loss of income, and by enabling the trustees to at all times readily procure re-investments without payment of brokerage a brokerage not uncommonly charged the lender for placing his money, as well as the borrower for procuring his loan in times of stringency. The application of the well known rule in equity should rather, therefore, be in favor of the trustees than against them with respect to these transactions. The objection narrows itself to a claim that Drury, by reason of his position as trustee, should in addition to the benefits of his valuable services, commercial knowledge, and business acumen, make the estate a gift of profits on his individual monies, to which the estate is in nowise entitled, and to which it could not make a semblance of reasonable claim, had the trustees been other than Drury or the agents of the estate been other than Arms and Drury.

86 The ninth objection is rather a claim than an objection that Alexander R. Magruder should share in the allowance to the trustees, with Drury & Maddox. For the purpose of passing upon this claim the relations of Alexander R. Magruder to the office of trustee should be briefly stated. By the will of the creator of this trust, William A. Richardson, it was provided:

"I also nominate my grandson, Alexander Richardson Magruder to be appointed by the Probate Court an additional co-executor with my brother and Mr. Drury when he attains the age of twenty-one years, without sureties of his official bond. I make this latter nomination because Alexander has a special interest in some trust estates in my hands which he can look to when he becomes older and

because I am anxious that Alexander should early learn a knowledge of business and acquire good business ideas and habits, and I join him as one of the co-executors because I think it will afford him an opportunity of doing so".

Under this provision of Judge Richardson's will, the Court, in this cause, on the 18th of April, 1906, on the petition of Mr. Magruder, presented and filed by Mr. Maddox, one of the trustees and his counsel in this cause, appointed Mr. Magruder a co-trustee. It appears from the record, however, that Mr. Magruder never took any part in the management of the estate or the execution of the trust, and as a matter of fact has not resided in Washington since his appointment (testimony pages 64-8 and the petition of Alexander R. Magruder filed in this cause June 16, 1909, page 4, paragraph 2). Moreover, by the will of Judge Richardson, it was provided also as follows:

"I desire that my executors shall be paid each for the actual services rendered by himself only, and that they shall not be responsible for each other's acts".

From a reading of the will of Judge Richardson, it will be seen that the designation of "co-executors" is inartificially used, they being by the will itself created trustees as well as executors. Moreover, in equity allowances to the trustees, unlike allowances in Probate to executors and administrators, are not necessarily to be subjected to an equal division. I find, therefore, no foundation for this claim; and the allowances made in this report are to Samuel Maddox and Samuel A. Drury, jointly, excluding Alexander R. Magruder.

The remaining observations of the memorandum of objections are met by subsequent developments in this cause.

First, the trustees have submitted their final account of the trust, and it is covered by this audit.

Second, the estate has been delivered and distributed under decree of this Court of July 9, 1909, to the beneficiaries: to Alexander R. Magruder, his moiety; to Isabelle R. Magruder the one-fourth part to which she is now entitled; to the substituted trustee, the American Security and Trust Company, the remaining one-fourth part of the estate in trust for Isabelle R. Magruder; except, however, the cash remaining in the hands of these trustees, pending the determination of their claim to commissions.

Third, the desperate and doubtful notes reported and listed in the executor's account and the first report of the Auditor, have been turned over to counsel for the beneficiaries (testimony pages 60-2, 63-4) excepting two small ones which passed from the hands of the trustees after collections on or cancellation of the same (testimony pages 10-11).

In this connection attention is called to the pleadings and proceedings in this cause, June 16, and July 9, 1909.

In the course of his reference, the trustees in the testimony and in some of the exhibits filed, more especially Ex. S. M. #4, and Auditor's Ex. No. 4, in their various endeavors to submit calculations as to the foundation for commissions, apparently claim that calcula-

tions of commissions should be segregated upon the personal estate turned over and the personal estate converted into realty. This developed in cross-examination of Mr. Drury (testimony pages 25-6, and 34-43), the apparent contention, or intention of a contention on the part of counsel for the beneficiaries, that commissions should not be allowed on certain of the notes turned over by the trustees, on the ground that these notes formed part of the purchase money on sales of real estate on which sales com-

89 missions had been allowed or were claimed. I have not regarded any of the analytical statements of the trustees as

having any conclusive bearing on their general claim to commissions or as affecting the usual and proper practice of basing commissions on the estate coming into the hands of fiduciaries; treating them in this reference merely as explanatory memoranda submitted for the purpose of enlightening the Auditor. In my final conclusions as to the allowances to the trustees, I have adopted the figures given in the first report of the Auditor of the principal estate in the hands of the trustees (executors) April 1, 1899, and from the cash book of the executors and trustees I have ascertained the amount of notes and cash collected between that date and April 25th, when the trustees received the estate, and deducted it from the total of the estate given by the Auditor in order to arrive at the actual principal estate received by the trustees. This practically eliminates the question apparently raised in the record, for the reason that none of these notes on which commission is objected to, is among these received by the trustees. I may state further that after careful examination into the various transactions with respect to the realty I find that in only two instances have the trustees received or claimed commissions on real estate into which some of the notes of the estate were converted, viz: the sale of Lot 104, Square 623, and the sale of \pm 421 9th Street. My attention was first drawn to this apparent contention after the preparation of the Schedules; and while it would seem that properly the amount of these notes should be eliminated from the calculation of com-

90 missions, the commissions would approximate \$300, and in view of the waivers of the trustees of other items which have been already allowed to them, and of the general considerations which I shall hereafter advert to, I have not felt called upon to further prolong the labor of the audit and increase the expense by re-casting the Schedules. As near as I can ascertain the amount of notes carried into these transactions was \$3,050, and if the Court sees fit, I suggest that the deduction of five per cent (5%) on that amount be made in the decree.

I shall not extend this report by reviewing at length the dealings of the trustees with this estate, but refer the Court for a particular account thereof in large part to the detailed statement of the trustees contained in Auditor's Exhibit 3, pages 38-55 inclusive. The history of this trust estate covers a period of over ten years from April 24th, 1899, to July, 1909, when distribution was practically made. The transactions of the executors extend through a period of about two years and one-half anterior thereto, beginning in the

winter of 1896. The estate consisted, outside of some small amounts of cash and stocks, of twenty-nine pieces of improved real estate, including the homestead, and thirteen unimproved suburban lots; and trust notes listed as good aggregating over \$248,000 and trust notes listed as doubtful or desperate aggregating nearly \$27,000.

Of the notes received by the trustees the great bulk were second trust notes; by far the larger number were for small sums; many of them were monthly payment notes; some of the doubtful and desperate ones were collected; as to others there was difficulty of collection, involving considerable correspondence and other professional services on the part of Mr. Maddox, one of the trustees. The transactions with respect to these notes were almost innumerable. The total number of the same approximates three thousand (Auditor's Exhibit #3, pages 51-5).

With respect to the real estate, it appears that the trustees collected the rents, looked after the repairs and the payment for the same, paid taxes, and kept the property insured. For a large part of the time this was done by the trustees without the intervention of agents, and in this accounting they are charged back with the payments made to agents in the latter part of the time covered by the trust. This included their services in these respects as to the homestead, 1739 H Street, which has been occupied by the family and yielded no income upon which the trustees could receive commissions. From an examination of the Auditor's reports and the statement of the trustees above referred to, and Auditor's Exhibit #4, it appears that the trustees have paid off thirty-three trusts aggregating over \$100,000, including the trust upon the homestead; acquired twenty-four parcels by foreclosure and one parcel by deed without foreclosure; sold sixteen parcels and two party walls; bought four parcels; and secured the cancellation of taxes and perfected the title to one parcel; all of these transactions involving great responsibility and extensive services on the part of the trustees. They

have passed over to the beneficiaries thirty-one parcels of realty upon which they have received commissions only in part, that is, their commissions on rents collected from the same and their commissions on notes converted into the same. Among them is the homestead of the value of \$35,000, for their services in connection with which they have never received a dollar. Neither has there been paid any money by the estate for the professional services of Mr. Maddox, necessarily involved in all of these transactions with respect to trusts, foreclosures, sales and purchases. When the estate was delivered to the beneficiaries it may be said that practically all of it consisted of the real estate before mentioned, and first trust notes well secured, in contradistinction to the negligible character of the estate when it was received; and it was little less in amount than the estate originally received by them, although it had supplied the beneficiaries with an income of \$8,400 per year during the period of the trust. The trustees have given the services of a trained and experienced business man in real estate matters and a trained and experienced member of this bar during all these years in the execution of this trust, services which have been highly creditable to them

and beneficial to the estate in every respect. I have no hesitancy in finding that the trustees are well entitled to the commissions which they claim, five per cent on that part of the principal upon which they have received no commissions and ten per cent on the income. I have accordingly made these allowances in this audit.

In Schedule A I have stated the principal account of the
93 trustees, charging them with the balance shown by the last report of the Auditor and collections since; crediting them with the costs of this reference and the amount of cash transferred to Schedule F to meet the deficiency of income; and showing the items of the principal estate remaining in their hands on final accounting. From the balance of cash shown by this Schedule I deduct the allowances to the trustees in Schedule J and show the balance of the principal estate to be turned over by them after the deduction of these allowances.

In Schedule B I have stated the principal cash account of the trustees, the balance of which is carried into Schedule A.

In Schedule C I have stated the principal note account of the trustees, showing the transactions in the collections and purchase of notes, and the notes remaining in the hands of the trustees in detail and by description, the total of which is carried into Schedule A.

In Schedule D I have stated the account of notes paid and purchased, and the balance of cash not reinvested which forms a part of the cash shown by the Schedules A and B.

In Schedule E I have reported a description generally of the real estate in the trust.

In Schedule F I have stated the income account of the trustees, charging them with collections of interest, dividends, rents, etc.,
and crediting them with payments for taxes, water rents, repairs, insurance, commissions to agents, (subsequently sur-

94 charged) expenses of sales, sundry small items and payments to the beneficiaries. The excess of expenditures is made up by transfer from principal cash account of the necessary amount.

In Schedule G I have stated the principal account of the Eliza C Magruder trust.

In Schedule H I have stated the income account of the Eliza C. Magruder trust.

These accounts are brought down to February 8, 1910. The trustees have not claimed or received commissions in their accounts of this trust.

Schedule I shows the basis upon which allowances should be made to the trustees on account of the principal estate, and the income. Taking the amount of principal estate shown by the first report of the Auditor, I have added certain notes not included therein, and the proceeds of sales of real estate and judgment against the United States. From this I have deducted the amount of principal covered by the account of the executors from April 1 to April 24th, taken by me from the books of the trustees for that period. I have also deducted certain notes dropped as uncollectible, certain erroneous debits, and the appraised value of the household effects upon which the trustees ask no commissions. The balance is the net personal

estate upon which the trustees would be entitled to commissions. Coming to the income, I have added the totals of income shown by the previous reports of the Auditor and this report and deducted the amount upon which commissions were previously allowed by the Auditor; the balance shown is the amount upon which the trustees are entitled to commission, being income reported in this account.

In Schedule J I have stated the allowances of commissions to Samuel A. Drury and Samuel Maddox, trustees; calculating them at five per cent on the net principal estate less the allowances previously made by the Auditor. These allowances I have recapitulated and from them deduct the items which the trustees consent should be charged back, that is, the payments to agents for commissions and counsel fee to one of the trustees. This recapitulation also shows the balance of cash in the hands of the trustees after the deduction of these allowances, the same as is shown in Schedule A.

It is unnecessary to report the distribution of the estate in view of the decree of July 9, 1909 directing allotment and distribution. Supplemental distribution may be provided in the decree.

LOUIS A. DENT, *Auditor*.

96

SCHEDULE C.

Principal Note Account.

Dr.

To Amount of promissory notes in hand per Schedule C of last report of Auditor.....	138,642.00
Notes purchased since, per Schedule D of this report	26,996.00
	<hr/> 165,638.00

Cr.

By Notes paid since last report per Schedule D of this report	38,587.84
Balance in hand.....	<hr/> 127,050.16

Consisting of the following notes Aguilar, Y. dated May 28, 1907 at 2 years, 5%, secured on Square 207, Lot 78...	500.00
Brewer, M. B., dated Aug. 2, 1895 at 2 years, 6%, secured on Square 214, parts of Lots 10 and 11.....	500.00
Brown, Lee, dated Nov. 2, 1908, at 2 years, 5%, secured on Square 937, Lot 51	2,000.00
	<hr/> 3,000.00

97

Forward	3,000.00
Brown, Lee, instalments, dated Nov. 2, 1908, \$1400, instalment secured on Square 937, Lot 51.....	1,294.16
Daingerfield, Wm. D. Dated July 1, 1895, at 5 years, 5% secured on Square 209, Lot 20, Balance.....	3,000.00
Draper, Wm. A., dated Aug. 6, 1908, 3 years, 5%, secured on Square 812, Lot 37	2,000.00
Angler, M. R., dated July 1, 1907, 3 years, 5%, secured on Square 1029, Sublot 150	1,000.00
Groff, D. B., 5 years, 6%, Feb. 1, 1895, secured on Square 754, Lot 95, \$2,500, Oct. 2, 1895, secured on Square 780, Lot 47, \$2,500. Feb. 1, 1895, secured on Square 754, Lot 93, \$2,500 Feb. 1, 1895, secured on Square 754, Lot 92, \$2,500	10,000.00
Groff, D. B., dated Oct. 2, 1894, 5 years, 5%, secured on Square 780, Lot 47...	2,000.00

Forward	22,294.16
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98

Forward	22,294.16
Groff, D. B., Balance, dated Dec. 9, 1898, 6%	1,500.00
Groff, D. B., dated Jan. 27, 1897, 5 years, 6%	5,440.00
Holman, B. W. dated Feb. 6, 1895, 3 years, 5%, Block 19, Lot 7, Mt. Pleasant, Balance	2,500.00
Hubbard, D. A., May 2, 1892, 3 years, 6% secured on Square 1029, Lot 186.	1,750.00
King, Charles W., Jr., 2 Notes \$1000 each and 2 notes \$500 each, Nov. 8, 1905, 5½%, secured on Lot 571, King's subdivision Mt. Pleasant.....	3,000.00
King, Charles W., Jr., 2 notes \$1000 each, and 2 of \$500 each Nov. 8, 1905, 5½%, secured on Lot 569, King's subdivision, Mt. Pleasant.....	3,000.00
King, Charles W., Jr., 2 notes, \$15,000 each, dated June 20, 1899, 3 years, 5%, secured on Lots 322, 323, 324, and 325, King's sub-division, Mt. Pleasant	30,000.00

Forward	69,484.16
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99

Forward	69,484.16
Lowry, Geo. C., 2 notes, \$1000 each and 1 note \$500, dated Feb. 26, 1907, 3 years, 5%, secured on Square 10, Lot 60, More and Barbour's addition.....	2,500.00
McLeran, John E., dated May 22, 1895, 5 years, 6%, secured on Block 24, Lots 7 and 8, Wesley Heights.....	3,500.00
Mazzei, Frank K. and Ella, dated May 25, 1900, 5 years, 6%, secured on Square 368, Lot 8.....	4,000.00
Morrissey, Emma, 13 notes, \$10 each, July 8, 1900, payable monthly, 6%, secured on Square 887, Lot 69.....	130.00
Newton, George P., Balance dated April 24, 1893 at 5 years, 6% secured on Square 1029, Lot 84.....	750.00
Forward	80,364.16

100

Forward	80,364.16
Palmer, Wm. J., dated Nov. 1, 1899, 3 notes \$2000 each 5 years, 5%, secured on Block 21, Lots 23, 24 and 26, re- spectively, Dobbins addition.....	6,000.00
Palmer, Wm. J., dated Nov. 1, 1899, 3 notes, \$500 each, 5 years, 5%, secured on Block 21, Lots 23, 24 and 26, re- spectively, Dobbins addition.....	1,500.00
Richold, Leopold, dated Apr., 20, 1907, 5 years, 5%, secured on Square 420, Lot 19	4,000.00
Richold, Leopold, dated April 20, 1907, 5 years, 5%, secured on Square 420, Lot 19	5,000.00
Robinson, Jesse D., 11 notes, \$500 each, dated Oct. 1, 1902, six to seventeen years, 5%, secured on Square 107, Lots 41 and 42	5,500.00
Stein, Robert, 37 notes \$28 each dated Oct. 24, 1907, payable monthly, 6% secured on Square 754, Lot 95.....	1,036.00
Forward	103,400.16

101

Forward	103,400.16
Wardman, Harry, three notes \$2,000 each, and 3 of \$500 each, dated Feb. 26, 1907. 3 years, 5%, secured on Square 2825, Lots 12, 13 and 14 respectively	7,500.00
Wardman, Harry, two notes \$2000 each, dated Oct. 25th, 1907. 3 years, 5%, secured on Block 36, Lot 63, Columbian Heights	4,000.00
Wardman, Harry, 12 notes, \$1,000 each, dated Oct. 25, 1907, 3 years, 5%, secured on Block 36, Lots 60, 61 and 62, Columbia Heights	12,000.00
Thompson, Emma J., Balance on second trust many years due, probably worthless	10.00
Herr, C. H., long past due, probably worthless	140.00
	<hr/>
	127,050.16

LOUIS A. DENT, Auditor.

102

SCHEDULE F.

Account of Income.

Dr.

To Interest collected on promissory notes	17,484.05
Dividends collected	984.00
Rents collected	7,843.55
Rebate on insurance	1.10
	<hr/>
	26,312.70

Cr.

By Taxes	4,614.12
Water rents	208.64
Repairs	1,764.95
Insurance	235.16
Commissions to agents	408.21
Auctioneer for sale, #47 Defrees Street	11.00
Cash Book	3.00
Trustees, notary, and recording release, #421 9th Street, N. E.	3.95
Advertising #47 Defrees St.	33.83
Trustee, notary and recording deeds, #47 Defrees Street	9.80

Copy of deed to Araby.....	2.50	
Summons, 2009 12th St.....	1.85	
Rental of safe deposit box.....	50.00	
Paid A. F. Magruder, Guardian....	233.34	
" Isabel R. Magruder.....	9,916.66	
" Alex. R. Magruder.....	10,200.00	
	<hr/>	
	27,697.01	
Transferred from principal account....		1,384.31
	<hr/>	<hr/>
Totals	27,697.01	27,697.01

LOUIS A. DENT, Auditor.

103 *Testimony Accompanying Auditor's Report.*

Filed March 16, 1910.

In the Supreme Court of the District of Columbia.

Equity. No. 20037.

MAGRUDER

vs.

DRURY.

TUESDAY, February 9th, 1909—2.00 p. m.

Hearing pursuant to notice.

Present: Mr. Nathaniel Wilson; Mr. Maddox for himself and Mr. Drury as trustees and also—

Mr. DRURY being duly sworn testified as follows:

I submit herewith the Sixth Annual account of Mr. Maddox and myself as trustees. This account shows the bonds and stock and other personal property with some exception to be hereafter noted, in the hands of the trustee, the promissory notes secured by mortgage now in the hands of the trustee such notes as have been paid since the last accounting and other notes purchased. The account also shows the interest collected on these promissory notes since the last accounting the dividends on the stock and the rents collected, all in the aggregate. It also shows payments made by the trustee on account of taxes, water rents, repairs and insurance, also amount paid to Alexander R. Magruder, amount paid to Isabel Magruder, amount paid to A. F. Magruder as guardian.

104 The account also shows the transactions since our last account in respect to the Eliza C. Magruder trust. We also submit a list of assets showing the property of every kind in the hands of the trustees with the exception of the household furniture, stock and implements on the farm in Frederick County, Maryland, and the securities in the Eliza C. Magruder trust. The account is as of date January 17, 1909.

Adjourned.

MAGRUDER

VS.

DRURY.

FRIDAY, April 16, 1909—11.00 a. m.

Hearing pursuant to notice.

Present: Mr. Nathaniel Wilson; Mr. Maddox for himself and Mr. Drury, trustees, also Mr. Drury.

Mr. Maddox makes the following statement:

The Trustees received from the executor of Judge Richardson, the sum of \$9,285.03 in cash; also received in promissory notes secured by deeds of trust on District real estate the sum of \$248,569.01, also 34 shares of the capital stock of the Northern R. R. Company at the par value of \$100, also 35 shares of the Bigelow Carpet Company par value \$100, Five shares of the capital stock of the Lowell Mfg. Co. which was subsequently consolidated in some way and the trustees received in exchange the 35 shares of the Bigelow Carpet Co. The trustees also received certain bonds of stock and a certificate of indebtedness of the Florida Coast Line Canal Transportation Co. nominal value, also household furniture and effects, carriages and harness which were turned over to the

105 beneficiaries for use and over these the trustees assumed no authority.

Of the Personal assets received by the trustees they still have on hand promissory notes aggregating \$138,237.94 as of date Jan. 17, 1909, the shares of the Bigelow Carpet Co. the Northern R. R. Co. and the stock of the Florida Coast line Canal Transportation Co.

Of the notes secured by deed of trust from time to time during the administration of their trust the trustees have paid out \$107,792.40 in the purchase of Arab, in relieving the real estate belonging to the trust of mortgages and incumbrances of the property at the time it passed under the control of the trustees. Most of this property has been under rental, but some has not. The family dwelling built on square 127 lots 12-13 and 14 has been continuously occupied by the family since the trustees took control, so they received nothing by rentals from this property, and of course nothing for looking after the taxes, repairs and other charges. On the 17th of October 1905 we paid off the trust amounting to \$15,000. Interest on this trust to the extent of \$4,500 was paid, and taxes aggregating \$3,528.70 making a total payment out of the personal estate on account of this property \$23,028.70.

Upon this aggregate of personal estate—\$107,792.40 the trustees think they should be allowed a commission.

They would also have a commission from the aggregate of notes turned over \$138,237.94, also on the shares of stock of the Bigelow Carpet Co. and the Northern R. R. Co. No claim is made at this time on the securities of the Florida Coast Line Canal Transportation Company because these securities are not of any nominal

106 value, and if the beneficiaries desire they will be turned over to them by the trustees. I have been personally connected

with the Company for twenty-three years, and although they have passed through many vicissitudes I am reasonably sure if the beneficiaries will hold on to the stock and bonds they will some day realize very handsomely from them. These securities came to the trustees from the late Judge Richardson as part of certain collateral given him for Henry G. Cook for monies due and owing.

The trustees should also be allowed a commission on the sale of lot 51 block 754 for \$3,904.83, also on lots 6-7 and 21 square 550 for \$8,000. Both these sales are noted in the second report of the Auditor and the figures are taken from that report, and on the \$3,400 proceeds of sale of lot 51 square 937, sold on the second of November 1908.

On the 27th of March 1903 the trustees expended \$1,200 for the purchase of furniture and farming implements at Arriby. On this expenditure no commission is claimed.

I submit herewith memorandum showing notes received by the trustees from the executor, summarized from the first, second, third, fourth and fifth reports of the Auditor and as they appear for the sixth and final accounting, marked Exhibit S. M. #1. I also submit a cash account of the principal of the estate as received from the executor as said account is summarized from the first, second, third, fourth and fifth reports of the Auditor and statement submitted by the trustees for the sixth and final accounting, marked Exhibit S. M. #2.

The trustees understand that the real estate remaining in the trust is to be delivered over to the beneficiaries free from
107 any claim of commission preferred by them.

In looking at the principal cash account I note that the trustees received from the executors and became responsible for \$9,285.03 in cash, and it would be but fair to allow them commission on the expenditure of this amount.

By Mr. WILSON:

Q. Have you a statement of the commissions which you think ought to be allowed in addition to those heretofore paid? A. I have made up no such statement. I simply have submitted to the Auditor an account of the personal estate which has passed through our hands on which no commission has been allowed.

Q. You do not state what you think should be allowed, the amount of commission or the rate of commission? A. No, I don't state the rate. It will be between 3 and 6% I judge. That is for the Auditor to decide.

Q. You have stated from the papers in your possession all the items concerning which you think a commission should now be allowed not heretofore allowed in the enumeration which you have given? A. I think so.

Q. As I understand it, in respect of this account you make the general claim that you are entitled to commission but the amount of commission you are entitled to you do not specify, you leave that to the Auditor? A. I said it ought to be between 3 and 6%. This

has been a very troublesome estate since it has been turned over by the executors to the trustees. I think about 5%.

Q. Referring to your sixth account which is now before the Auditor on the last page in that account, as I understand it, there is no specific claim for commission? A. No, because it has been customary for the Auditor to allow a rate of commission on income.

Q. I understand that there was a certain amount of cash on hand at the time you made the account? A. \$6,638.48.

Q. On page 8, rents collected \$6,271.60 and on the same page paid commissions for collection of rent \$442.64. Who were those commissions paid to?

By Mr. DRURY: They were paid to Arms & Drury, as I could not undertake to do that personally.

Q. Is the same item of charge in all the accounts? A. I don't know whether it is from the beginning or not. It is in the account of 1907—\$445.03. It is not in the first and second. In the first part of the business he undertook to do that without any charge at all.

Mr. DRURY: I have a whole lot of notes which have been charged off and disposed of which I have to turn over.

Q. Those were retained for the purpose of making out of them what you could. Have you a list of them? A. No, I have not.

Q. I think we ought to have a list of them.

Q. In looking over these accounts I find that some of the notes that came to the trustees from the estate are still in possession of the trustees. In other cases, but larger amounts the notes were paid and the proceeds re-invested. The Warden notes were brought and the notes of Groff were bought— A. No Groff notes were bought.

109 Q. Quite a number of these notes were bought by the trustees and I want to know of whom they were bought and who represented the sellers of the notes and I want to know particularly whether those transactions were made by Arms & Drury? A. Yes, they were.

Q. All the notes purchased were purchased through Arms & Drury? A. That is right.

Q. And did Arms & Drury get a commission for the negotiation of the notes? A. How do you mean? When they originally made the loans to the people?

Q. Yes? A. Oh, yes, sir.

Q. When ever these notes were purchased by Arms and Drury they got a commission? A. But it was not this money that was used directly to make these loans. Arms & Drury made the loans and then as the money accumulated the trustees purchased these notes. They might have been running a short time or a long time—

Q. The notes were purchased of Arms and Drury by the trustees merely as an investment? A. Yes.

Q. When Arms & Drury got the notes in their possession which

they sold to the trustees then they charged the person who made the loan the commission? A. Yes.

Q. What was the usual commission, for instance on the 110 Warden notes? A. It varied. It runs from one to two per cent, usually about 1%.

Q. Many of these notes were renewed from time to time. A. Yes.

Q. When they were renewed there was a commission paid? A. On some there was. Those belonging to the estate were not. The people dealt with Arms & Drury—

Q. You mean none of the notes which the trustees owned had a commission charged on for renewals? A. I should say to the best of my recollection not, but that covers a long period.

Q. These notes that were bought by the trustees and are here in the schedule as being notes that the trustees owned, all of them were the property of Arms & Drury? A. Not all of them, because some of them represent charges, etc.

Q. Can you tell which of them? A. Yes, but only from memory.

By Mr. MADDOX:

Messrs. Arms & Drury are real estate brokers who negotiate a great many loans on real estate in Washington, frequently what is known as building loans. They advance their own money from time to time until the completion of the building, and when completed they find purchasers for the notes. As one of the trustees in this case from time to time as funds of the estate became sufficient, he purchased these notes at their face and accrued interest and in every single instance we got back the money invested and interest accrued to the face and tenure of the note.

111 The trustees are entirely willing that the balances heretofore credited to them as being commissions on rents collected shall be deducted from the commission which the Auditor may find due us on this accounting.

Adjourned subject to notice.

MAGRUDER

vs.

DRURY.

JUNE 11, 1909—1.30 p. m.

Hearing pursuant to notice.

Present: Mr. Wilson, Mr. Maddox, Mr. Gatley, and Mr. Drury.

Statement by Mr. Maddox as follows:

Several of the notes that came into the possession of the executors cannot now be turned in for the following reasons:

1. A Note of A. H. Gillis for \$380. This note was given to me sometime in 1897 or 1898 by Mr. Drury who was then settling up the estate of Judge Richardson as executor. Gillis lived in Boston and I sent the note there for collection to Mr. Herrick, a lawyer, who made two collections of \$25. each and each time kept \$10. for his services, sending me on the 15th of February \$15. and on Decem-

ber 17th. of that same year \$15. He reported that he could not make any further collections and that in his opinion it would not pay to incur the costs of suit. I did not ask him to return the note and he has it now as far as I know.

2. Then there was a note of G. B. Chittenden, endorsed or guaranteed in some way by F. W. Pratt. This also was handed
112 to me for collection by Mr. Drury as executor. After considerable correspondence with Mr. Pratt, I succeeded in collecting two sums on account, one June 10, 1898, of \$50, and one Sept. 14, 1898, of \$50. Then I could make no further collections from Mr. Pratt or Mr. Chittenden and they made no responses whatever to my requests for payment. I thereupon brought the matter to the attention of Mr. H. S. Cummings who in some way appeared to be responsible for the note, and on the 22nd of November, 1898, reported that I could not make further collections from Mr. Pratt or Mr. Chittenden, but that he would have to himself undertake the payment of the note the balance at that time being \$241.83. Mr. Cummings did not seem to think he was liable on the note and was very unwilling to take up the payment. We dickered about it some months and finally in the spring of the following year I wanted his testimony in the tax suit at Cambridge, Mass., on the question of domicile to show that Judge Richardson in his lifetime had frequently declared his domicile as being in Washington. On this point the case turned. Mr. Cummings then told me if I would "Swear it off" as to the Chittenden note he would go on and testify without any charge for his time. This he did and his testimony was very potent, and we finally got a judgment in favor of the defendants, the amount involved being about \$15,000. I then turned this note over to Mr. Cummings.

3. Mr. Drury also gave me for collection a note of a man named Philip Inch of \$260. I had a good deal of correspondence with Inch, also with Pratt who seemed to be in some way connected with the matter, but the best I could do with the note was to collect \$50
113 on account on March 21, 1898. Then or since the note disappeared from my office so it was never paid and as yet I have not been able to trace it. I am quite sure, however, that nothing could have been collected further.

In my ledger account with Mr. Drury as executor of the will of Judge Richardson beginning in March, 1897, I have charged myself with various collections on account of the Gillis, Inch and Pratt-Chittenden notes amounting to \$220. I rendered him an account of this on the 10th of January, 1901, and asked him to pay me the difference, having made outlays amounting to \$9.11 in excess of what I collected. This Mr. Drury sent me under date of Jan. 11, 1901.

In my letter of the 8th of January referring to this matter I did not give Mr. Drury the items going to make up the total of \$229.11. He sent me, therefore, only the \$9.11 due me, but properly the \$229.11 ought to be charged against and as forming part of the \$18,800 which was allowed him by the order of the Court of Massachusetts. Mr. Drury is ready to account for it now.

I file herewith a memo. showing these transactions more in detail marked S. M. #3.

I also requested Mr. Drury to make up a memo. showing what payments he had made for costs of the suit, traveling expenses of Mr. Cummings and Dr. Magruder to Boston and other items which ought properly be charged against the \$18,800. I submit herewith a statement showing the amount of \$411.50 which is made part of Exhibit S. M. #3.

I also submit a statement of items on which the trustees claim a commission of 5% marked Exhibit Sm. #4.

I want to state further that when our first account was presented to the Auditor it opened as of date of April 1st, 1899, while
114 I was not appointed trustee until April 24th of that year, when the account of Mr. Drury and myself could properly begin. When the account was presented by Mr. Drury I did not understand that he had gone back to the first of April and only discovered it since the last hearing in this case before the Auditor. We have therefore fixed the first account to make it start from the time when I was appointed trustee.

Examination by Mr. WILSON:

Q. There was prepared and filed, I think here with the Auditor, by you, a statement of what the trust estate consisted on the 17th of January. What other papers, notes or securities are in your possession as trustees? A. I don't think there are any other papers in our possession except some old notes which have been charged off as desperate from time to time in accountings before the Auditor.

Q. In your first account you charged yourself with promissory notes as per schedule "desperate" \$26,907.96. I will ask how those have been accounted for if they are still in your possession any of those old notes supposed to be worthless? A. We have them all.

Q. Have you a list of them? A. We have the notes themselves; also a list of them.

Q. Do your accounts show what if any monies have been received in respect of those notes included in your list? A. My ac-
115 counts do not show that any money has been received on account. Some money was received on one of those notes for which we accounted in *our* of the reports to the Auditor.

Q. How is that list marked? A. Schedule BB of the first report.

Q. The trustees present a claim of 5% on items enumerated in paper marked S. M. #4—does this charge include or exclude all other charges for commissions except those contained in previous accounts. Is it final? A. This is final as to everything we will turn over. As I understand it, the beneficiaries want to leave with us certain notes for us to try to collect.

Q. This does not include commission on the income? A. No.

Q. Is such a charge contained in your account already presented?
A. For the account of income?

Q. Yes? A. Yes, that is included.

Q. Then in addition to the items in this paper there will be included a percentage on \$21,243.33 income? A. Yes.

Q. The first item in the Exhibit 4 which you presented is cash received from the executors \$286.60 and I see that in your first account you charged yourself as having received from the executors \$9,285.03. A. That comes by reason of the lap.

Q. The first account was incorrect? A. Yes, sir, because it started at the wrong date.

116 Q. In respect of the second and third items of stock that came in your possession at the time you were appointed trustees, that stock is in the same shape as it was then? A. Yes.

Q. Cash on hand for distribution Jan. 17, 1909—\$6,668 I suppose that is changed? A. Very much. It has been very largely increased by reason of payments of notes.

Mr. DRURY testifies as follows:

By Mr. MADDOX:

Q. At what date did you open an account of the trustees substituted by this Court? A. April 1, 1899.

Q. The account ran along continuously without any change in its books? A. Yes.

Q. You did not separate the executors' account from the trustees' account? A. No, sir.

Q. The trustees' account should have begun then at the time of their appointment— A. April 25th.

Q. Have you re-stated it on that basis? A. I have.

Mr. DRURY: I present herewith statement showing receipts and disbursements from the 25th of April, 1899, to date of our first account before the Auditor.

Adjourned.

117

MAGRUDER

VS.

DRURY.

FRIDAY, July 9, 1909—1.00 o'clock p. m.

Met pursuant to adjournment.

Present: Mr. Nathaniel Wilson for the complainant; Mr. Maddox for himself and Mr. Drury as trustees, and also Mr. Drury.

Cross-examination of SAMUEL A. DRURY.

By Mr. WILSON:

Q. In the paper filed by the trustees yesterday, in respect of the trustees' first account and the item therein in respect of the entry of \$18,800 as of date April 24, 1899, you state that the account of the executors was hastily prepared by you and the property on hand summarized as of the estimated value of \$14,458.37. Will you state if up to that time the business of the estate and all the transactions concerning it had been within your own personal and immediate knowledge and control? A. Yes, sir; it had.

Q. And the books of the executors were in your keeping? A. Yes, sir.

By Mr. MADDOX:

Q. Exclusively? A. Exclusively, yes.

By Mr. WILSON:

Q. And your books showed all moneys received by the executors and all moneys paid out? A. Yes, sir.

Q. As part of the paper filed by the trustees is a copy of
118 what appears to be the first and final account of George F. Richardson and Samuel A. Drury, executors, which you remember? A. Yes, sir.

Q. By whom was that account actually prepared? A. I am not so clear about that final account. I had the assistance, at various times, of Mr. Greer, Mr. Smith Thompson, and several other attorneys here; but to place them in their proper position and to tell who assisted in preparing each report is rather difficult.

By Mr. MADDOX:

Q. Was it Mr. Greer or Mr. Weir? A. I rather think it was Mr. Greer who helped me to prepare that final account in Massachusetts; he helped me under Mr. Weir's instructions as to form.

By Mr. WILSON:

Q. The account was actually made up here, then? A. Yes, sir.

Q. And from data in your possession as shown by your books? A. Yes, sir. The reason it was prepared hastily was because of the fact that Mr. Weir who was associated with young Mr. Richardson who was taking care of part of the tax title suit in Massachusetts, had an appointment at the Arlington Hotel on a Sunday to prepare the papers, and two days after that, I think on Tuesday, that report was passed by the Massachusetts court. It was made out between that Sunday forenoon when we had the meeting at the Arlington and the time necessary to get it started to Boston or to Lowell to have it passed.

119 Q. But it was actually made out here? A. Yes, sir.

Q. And signed here by yourself and Mr. Maddox as trustees, as it appears? A. Yes, sir.

Q. And you both, as it appears here, joined in the request that it should be allowed? A. Yes, sir.

Q. Was the form in which it was presented to the Court just the same as you had agreed upon here? A. Yes, because I knew nothing about any other form.

Q. Who first made mention of the sum of \$18,800 in respect of compensation or fees or commission at that time? A. It would be very difficult for me to say who first mentioned it, because that was a good many years ago; but the amount of the compensation as it was thought would be passed by the Massachusetts court was suggested by Mr. Weir.

Q. What, if any, suggestion, request or expression was made by you in regard to it? A. None whatever.

Q. You say in your statement that you were told or given to understand that out of that amount you must pay counsel fees in the

tax cases and counsel fees in Washington : Who told you that? A. I cannot say who told me that.

Q. State, as nearly as you can recollect, how that sum was arrived at. A. It is utterly impossible, Mr. Wilson, for me to recall
120 who told me that; I suppose Mr. Weir did, as I think he was the only one who possessed any knowledge required to make such a suggestion, I understood it as meaning just the fees that were connected with that tax suit.

Q. Who told you what disposition was to be made of the remainder after paying the fees you have mentioned? A. There was nothing said about that at all, except that it was understood that I had done the work in connection with the estate and Mr. Richardson did not expect to get any compensation; and I think Mr. Weir understood that very well when that amount was mentioned; certainly Mr. Richardson had knowledge of that when that account was passed.

Q. I mean at the interview here, what conversation occurred, and upon what basis was that sum arrived at? A. I cannot say on what basis it was arrived at. I suppose Mr. Weir arrived at that from his knowledge of the Massachusetts law; but it was understood that that was the compensation to come to me, and that out of that I was to pay these expenses in connection with the tax suit in Massachusetts.

Q. In the account beginning with the heading Expenses of Administration, including care of property, etc., and the amounts of notes collected, payments made, etc., who furnished the particulars therein enumerated? A. They were all furnished by me, and make up part of this report.

Q. You yourself made no suggestion, application or request in respect of the amount that should be paid or allowed to you under that heading? A. None whatever; no, sir.

121 Q. When and how did you actually receive that amount of \$18,800? A. Of course I actually had it in hand.

Q. At that time, on that Sunday? A. On that Sunday.

Q. In what form did you get it into your personal possession?

Mr. MADDOX How did what get in his personal possession?

Mr. WILSON: The \$18,800 referred to in that statement.

A. They were already in my possession as executor.

Q. On what date was that? A. Do you mean that Sunday?

Q. Yes, when that account was made up. A. The date of the account is the 24th of April, 1899.

Q. And the money at that time was in your possession. A. Yes, sir.

Q. How, exactly, did you segregate that amount from the funds of the estate and get it into your personal possession? A. There was no cash kept to pay it, so I took \$13,000 of notes and \$5800 in cash—a check.

Q. What notes were those? A. A Haller & Moore note of \$6,000, a Cameron and Mauro note for \$2,000, and the Theodore W. Bedford note for \$5,000.

Q. And the cash? A. The cash was a check drawn to my order.

122 Q. On whom? A. My own check as executor, payable to myself.

Q. On what bank? A. On the Columbia National Bank.

Q. The proceeds of the notes then, were yours when you collected them? A. Yes, sir.

Q. Did you give any receipt for that payment? A. I do not recollect, sir.

Q. What entry on your books appears in respect of the payment by you as executor, and the receipt by you individually of that amount? A. I credited on the cash-book the notes for their face and accrued interest as if the money had been paid into my hands as the executor, and on the other side I charged up the item of \$18,800 as the allowance for fees, etc., in Massachusetts.

Q. When were those entries made? A. On the 24th day of April, 1899.

Q. What was done with the account when it was prepared here and verified by you and the other trustee? A. Now, again, it is only my recollection that Mr. Weir took that on with him. It was very material to get that account passed and get the money out of Massachusetts before we would be called upon to pay the assessment for another year's taxes, and so it was all done as expeditiously as possible.

123 Q. You did not go on with it? A. No, sir.

Q. And you were not in court when the report was presented and acted upon? A. No, sir.

Q. And of what occurred there you have no knowledge? A. No.

Q. State particularly and exactly what disposition was made by you of that \$18,800. A. As particularly as it is possible for me to state at this time I sent a check to Mr. George F. Richardson for \$1,000 which I understand was to be turned over and probably was turned over to Mr. Weir; I gave a check to Mr. Moody for \$1500; and I gave a check to Mr. Maddox for \$1500.

Q. Was that check payable to Mr. Richardson? A. Yes, sir.

Q. Your own check? A. No, sir; it was not my own check, because instead of keeping a bank account, I kept an account on Arms & Drury's books, and it was Arms & Drury's check.

Q. And it is your best recollection that there was such a check payable to Mr. Richardson? A. Yes, sir.

Q. Do your bank books show it? A. I have not looked it up.

Q. Judge Richardson refused to take any compensation as executor, did he not? A. Yes, sir.

Q. You have no personal knowledge of what became of that check, have you? A. No, I could look up the check and tell.

124 Q. What were the dates of the checks for \$1500 each to Mr. Moody and Mr. Maddox? A. The date of the check to Mr. Richardson was April 24, 1899; the check to Mr. Moody and the check to Mr. Maddox were both dated on the 1st day of June, 1900.

Q. What else was there? A. Then there were some smaller items.

Q. What were they? A. Amounting to a couple of hundred dollars. I cannot tell what they were for. I did not keep a per-

sonal cash book, and it was only on account of the size of those large checks that I have been able to get track of those.

Q. You say there were some smaller items amounting to about \$200; what became of the difference between \$4,200 and \$18,800?

A. I kept it.

Q. The difference would be \$14,600, and that you kept as your own compensation for services you had rendered up to that time, whatever they were? A. Yes, sir.

Q. In respect of the determination of that amount and the allowance of that amount by the Court, you only know what you have stated here and what appears from the account itself? A. Yes, sir.

Q. That amount was considered and was held and continued to be held as your own exclusively without any payment being made from it to anybody else? A. Yes, sir.

Q. It went to your own credit on your own private account and was used as your own absolutely and entirely? A. Do you mean that I made no further disposition of it?

125 Q. I mean it was for yourself to dispose of as your own property? A. I disposed of it as my own property, yes; but there is an understanding in my office that when either Mr. Arms or myself makes any commissions outside that simply goes into the commission account of Arms & Drury.

Q. Do you mean to say that no part of that amount went to the credit or for the benefit of Arms & Drury directly or indirectly? A. I mean to say that all of that balance that remained to me went to the credit of Arms & Drury.

Q. That is, what you received as compensation as executor went jointly to the benefit of Arms & Drury? A. Yes, sir.

Q. That was the disposition you made of it as an individual? A. Yes; sir; as I make the same disposition of any commission I make anywhere.

Q. Was that placed to the credit of Arms & Drury immediately? A. Yes, sir; Well, I want to qualify that in this way: I think it was put to a special account until these disbursements had been made, and then the balance went to the credit of Arms & Drury.

Q. I was only inquiring about the \$14,600. The check to Moody for \$1500 and the check to Mr. Maddox for \$1500 were the checks of Arms & Drury? A. Yes, sir.

Q. In this paper to which I have referred as having
126 been filed yesterday there are statements showing the amounts of notes purchased by the trustees: Can you state whether all of the notes purchased by the trustees were purchased of or through Arms & Drury? A. I cannot say all; I could not be clear in answering that question.

Q. Well, in regard to the greater part of them? A. Yes, sir.

Q. About what proportion? Just give me an idea. I suppose your books would show that. A. I should say ninety per cent of them.

Q. With your last and sixth account there is a schedule of \$26,996

of notes purchased: Were those notes all purchased of Arms & Drury?
A. No, sir.

Q. What were? A. The Aguiler note, the Lowery note, the Wardman notes—

Q. The two Wardmans? A. Yes, sir.

Q. And the others? A. The Lee-Brown note for \$2,000, as also the installment note, was taken as purchase money on account of a house belonging to the estate.

Q. And these notes were part of the purchase money? A. Yes, sir. The Draper note was taken on account of a property which we foreclosed. We formerly held Catherine West's note on 443 Fourth Street, Northeast, and default was made in payment of the note, and it was foreclosed; this \$2,000 note was taken as part payment for that.

By Mr. MADDOX:

127 Q. You mean taken as cash? A. Yes, as a condition of the sale, so as to create a sale. The Stein notes were taken in an adjustment of accrued interest on some of the Groff notes and were secured on the same property on which the interest had accrued; the Stein notes represented accumulated Groff interest.

By Mr. WILSON:

Q. These Wardman notes belonged to Arms & Drury, did they?
A. Yes, sir.

Q. How long had they had them? A. I could not answer that.

Q. Can you state approximately? A. I could not. We made builders' loans there for Wardman.

Q. I refer to these particular notes amounting to \$16,000. A. These particular notes were only part of a large builders' loan that we made on a row of houses; they were sold to this estate as the estate accumulated money. I could not give you dates without referring to the books.

Q. Can you state approximately, in respect to these particular notes, how long you had had them? A. I really could not from memory.

Q. Can you state approximately what these particular notes cost Arms & Drury? You say they owned them. A. These notes cost Arms & Drury their face, less a certain commission.

Q. What was that commission? A. I cannot recollect that.

128 Q. Approximately. A. Probably $11\frac{1}{2}$ per cent.

Q. Were they the subject of and did they enter into a contract that existed between Arms & Drury and the Wardmans?
A. Was there a written contract?

Q. Yes. A. No, sir.

Q. There was a verbal contract? A. Yes, sir.

Q. But in respect of these particular notes for \$16,000 what was the verbal contract? A. This money we guaranteed to advance as he required it in the course of his building, which probably covered a period of something near three months, I imagine, that being about the usual time it takes to complete buildings of that class.

Q. What was Wardman to pay for the loan? A. I cannot recollect.

Q. As nearly as you can? A. Probably about $1\frac{1}{2}$ per cent.

Q. On what? A. On the face of the loan, whatever that was; I do not remember what it amounted to.

Q. Was it for \$16,000, or was it part of a larger transaction? A. I think it was a good deal more than that; I don't know how much.

Q. What if any additional allowance was made to him in the way of a bonus or payment or commission by Arms & Drury? A. Made to whom?

129 Q. Wardman. A. Nothing at all.

Mr. MADDOX: What do you mean by that, Mr. Wilson?

Mr. WILSON: I mean whether or not Wardman ever paid anything more than $1\frac{1}{2}$ per cent for this arrangement by which he was to have money when he needed it.

The WITNESS: Not at all, although I am not sure about that commission being $1\frac{1}{2}$ per cent.

Q. What is your best recollection? A. That is my best recollection, but we had so many transactions varying from one per cent to two per cent that I could not recollect this particular one.

Q. Then in respect of this \$16,000 Arms & Drury did receive $1\frac{1}{2}$ per cent and whatever interest was due up to the time the notes were sold? A. When they sold those notes they got the accumulated interest.

Q. When did they get the $1\frac{1}{2}$ per cent? A. That is supposed to be in the general account with Wardman, and you charge it up when you make the entries on the book; but what particular part that comes out of it is impossible for me to say—whether it comes out of the first part or the last part; it is simply a charge in that account.

Q. How many notes of Wardman, approximately, were sold by Arms & Drury to the trustees? A. That will be difficult to say.

Q. Approximately. A. It is almost impossible to state approximately because if we made a loan for \$3,000 we might make
130 three notes of \$1,000 each, or two notes of \$1,000 each and two \$500 notes, so that a loan of \$3,000 might be sold to four or five different people and those people who purchased them we would not know at the time we made the loans would be the purchasers.

Q. Then Arms & Drury had these notes on which they had a right to charge $1\frac{1}{2}$ per cent to Wardman, and they (Arms & Drury) sold those notes to Drury and Maddox, trustees? A. Yes, sir.

Q. Can you give any approximate idea of how many notes were sold by Arms & Drury to Drury & Maddox, trustees, on which Arms & Drury got a commission or charge or payment of from $1\frac{1}{2}$ per cent to any other percentage? A. I could not. I could go through these papers and find out.

Q. Were the results and practice the same in regard to the ninety per cent of notes that the trustees bought? A. What do you mean by the practice?

Q. In respect of the purchase of Arms & Drury of notes on which

they got their 1½ to 2 per cent? A. They were not necessarily all builders' loans; but it was the practice of Arms & Drury, and still is their practice, to take any good loan that is offered to them and which they think is a first-class loan, not knowing at the time of the purchase or make the loan where it will be disposed of; we simply make a loan and wait for clients to come in with the money and take it off our hands.

Q. Have you any statement or account of the profit made by Arms & Drury in respect of or out of the notes that Arms & Drury sold to the trustees? A. I have not, sir.

Mr. Maddox objected to further cross-examination along this line, and Mr. Wilson withdrew the question for the moment.

Q. What are the relations between Arms and Drury in their business? Is it a corporation, or is it a partnership? A. It is a partnership.

Q. What are the respective interests of the partners? A. Equal.

Q. Whatever profit is made by Arms & Drury, one-half of it is yours? A. Yes, sir.

Q. Will you state what in this account first was paid to Arms & Drury for services in respect of any matters of business connected with the estate? A. The only moneys that Arms & Drury got from the estate were the commissions for the collection of rents, as they appear in each account, and that was done because it involved a good deal of trouble; I have never put the estate to any expense whatever for clerk-hire or anything of that kind, and I was advised by counsel that it would be permissible to collect that commission.

Q. There is a charge in your account of commissions for collection of rents \$442.64; that was paid to the firm for the work of making collections of rents? A. Yes, sir.

Q. As a member of the firm of Arms & Drury you were entitled to one-half of that? A. Yes, sir.

Q. In respect of the cost of insurance, \$263.66, by whom was that insurance effected? To whom were the fees paid? A. I should say most of it went through the office of Arms & Drury, out of which they got a commission of 15 per cent, possibly as high as 25 per cent on some of it; there was other insurance they got nothing on.

Q. And so they got a commission on all the insurance charges effected by Arms & Drury? A. Not all of it, but propably most of it.

Q. Have you any idea what the amount was? A. The commission would average from 15 to 25 per cent. Excuse me a minute—I would like to say, in connection with that insurance, that I don't think it would have made any difference whether it was insured through Arms & Drury or others; it would not have cost the estate any more.

Q. The cost of repairs is put down here at \$1640.70. How were they charged up and how were they paid? A. The work was done at the lowest possible cost and paid for in full, with no commissions.

Q. Was that done through Arms & Drury? A. Yes, sir.

Q. Arms & Drury ordered it? A. I did; it is all the same.

Q. Were the bills rendered to the firm? A. Yes, sir.

Q. In respect of this last account, for instance, what if any charges of any kind or for any purpose were made against the estate by Arms & Drury? A. None, other than those that have been stated.

133 Q. The last item in your account is for "new cash-book, \$3;" was that purchased by Arms & Drury, or by the trustees? Who would pay the bill? A. I think it was paid by the check of the trustees.

Q. Things like that were entirely distinct from the matters of Arms & Drury? A. Yes. The only business done through Arms & Drury was business that would have to be done through someone other than the trustees.

Q. In respect of the commissions heretofore charged and allowed to the trustees, were they in like manner divided or shared by you with Mr. Arms? A. Yes, sir.

Q. One half of your half went to Mr. Ames? A. Yes, sir.

Q. So that, so far as the compensation and emoluments of the business were concerned, he was really as much rewarded as you were? A. Yes, sir.

Q. Perhaps you can give me approximately the total amount of the notes sold by Arms & Drury for the estate? A. I do not believe I can do it even approximately. I could foot up the items.

Q. If you cannot do it you can say so. A. I do not believe I can, Mr. Wilson.

Q. I understood you to say that 90 per cent of all that had been purchased were purchased by Arms & Drury: That is correct, is it not? A. Yes, but that is merely a guess.

134 Mr. WILSON: I will say now that in determining what compensation is justly payable to Mr. Drury as one of the trustees, it is proper and necessary to take into consideration what profit he has derived, as a member of the firm of Arms & Drury, from the sale of those notes, and I will ask him to state, as nearly as possible, what the profit was, and if he cannot do so now, to prepare himself to do that later.

The WITNESS: I should say that the profit from the sale of those notes was nothing; the profit from the purchase of those notes was something.

Q. What was the profit from the purchase? A. As I say, that would be very, very difficult to determine.

Q. Your books will show, will they not? A. Yes, they will show, but it will require an immense amount of work to arrive at it, to go over every note that has been purchased and the history of it.

Mr. MADDOX: Now, Mr. Auditor, I think we are right back to that line of investigation that was touched upon by Mr. Wilson a few moments ago, whether it is necessary to go into these loans which Arms & Drury made in financing certain building operations. It does not seem to me to be pertinent here to go into the books of Arms & Drury on that matter.

By the AUDITOR:

Q. I understand that these transactions were confined to building loans? A. No, sir. Arms & Drury always make loans regardless of the sale of the notes.

Q. You mean that they never invested the money they had on hand in this trust. I understood you to say at some of our hearings that they did. A. No. Arms & Drury always make loans
135 that appear good to them with their own funds.

Q. Always out of their own funds? A. Yes, sir.

Q. And not out of the funds of their clients? A. Altogether regardless of their selling the notes. When we make a loan we never know where we are going to place that loan.

The AUDITOR: The proposition is that one trustee has received compensation in connection with making these investments, and that that should be taken into the account.

Mr. WILSON: That is all.

The AUDITOR: Whether it turns out to be true or not is another matter.

Mr. WILSON: As a general proposition, a man cannot be buyer and seller at the same time.

Mr. MADDOX: Arms & Drury make loans with their own money, not the money of their clients.

The AUDITOR: We are nearly through with the testimony on that point, and we might as well finish it.

By Mr. WILSON:

Q. I will ask you this: In respect of the notes appearing in account 6 as having been purchased by the trustees of Arms & Drury, what profit did you, as a member of the firm of Arms & Drury, realize, or what money did you receive from the sale or transfer of said notes to the estate, directly or indirectly? That means what, if any, commissions or allowances, bonus or discount, that was paid did you get, as a member of the firm of Arms & Drury, from those
136 notes? A. I can only answer that in a general way. I cannot answer that particularly because I do not know the exact conditions of that particular transaction. But I should say that there was probably a commission of $1\frac{1}{2}$ per cent, out of which I would naturally be entitled to one-half.

Q. Then, in respect of these notes of \$16,000, your share would be \$240? A. \$120, and that is only approximate.

Q. Will you please examine and be prepared to state definitely what the transaction was in respect of the other notes, and what, if any profit, you realized?

(Objected to by Mr. Maddox, the competency of this line of examination to be determined by the Auditor hereafter.)

A. Yes.

Adjourned to 10:30 o'clock A. M. of Monday, July 12, 1909.

MAGRUDER

V.

DRURY.

MONDAY, July 12, 1909.

Met pursuant to adjournment.

Present: Mr. Nathaniel Wilson for the complainant; and Mr. Samuel Maddox and Mr. J. J. Darlington for the defendant.

Cross-examination of SAMUEL A. DRURY (resumed).

By Mr. WILSON:

Q. The last inquiry related to the notes that appear in your 6th account as having been purchased of Mr. Wardman, and you were to be prepared at this hearing to state what that transaction was as to the acquisition and sale of those notes. A. I want to correct
137 the statement that, to the best of my recollection, the commission there was $1\frac{1}{2}$ per cent. Looking at the entry, I find it was \$410, which is 2 per cent on the total amount of \$20,500, of which \$16,000 was afterwards disposed of out of the trust estate. In that schedule the Aguiler note and the Lowery notes also came from Arms & Drury.

Q. Was there any percentage of profit on those? A. The Aguiler loan was \$6500, of which the estate acquired \$1500, and on that \$6500 note Arms & Drury got a commission of \$100.

Q. Not \$100 on the \$1500, but on the \$6500? A. On the whole \$6500. On the Lowery note of \$2500 Arms & Drury got one per cent commission.

Q. In the schedule of items in respect of which additional compensation or commissions are claimed, there is, as the first item of notes on hand, \$138,237.94. That includes the Aguiler note, does it not? A. It includes two of the Aguiler notes of \$500 each, but one of those has since been paid. When this was made out it included the two \$500 Aguiler notes.

Q. Perhaps you do not understand me. I asked you whether or not in the memorandum of \$138,237.94 the notes purchased are included. A. Yes sir.

Q. What were those notes given for? A. Those notes were given for money loaned to make improvements.

Q. In that same memorandum relative to commissions the 7th item is in respect of lot 51 square 937. That is, as I understand, purchase money? A. Yes sir.
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Q. And there is a suggestion—I will not say a claim—of a commission of \$3400 on that. Had the Aguiler note anything to do with the purchase for sale of that lot? A. Nothing whatever.

Q. That transaction was merely the purchase of a note? A. Yes sir.

Q. In the list of notes purchased is the note of Lee Brown for \$2,000? A. That is part of the deferred payments on account of that sale of lot 51 in square 937.

Q. Who made out the 6th account? A. I made it out.

Q. The Lee Brown note for \$2,000 is, as I understand, like the other notes, included in the notes on hand? A. Yes sir.

Q. In the memorandum as to commissions, on the face it appears, does it not, that you are claiming or suggesting a change of commissions or compensation for the Lee Brown note as being a part of the notes on hand, and you are also claiming compensation in respect of the sale of the lot in respect of which that note was given?

Mr. DARLINGTON: We concede that that was an inadvertence, and that we are not entitled to a commission both ways.

Mr. WILSON: State what your attitude is in regard to that.

Mr. DARLINGTON: We agree that the Lee Brown note, for 139 \$2,000, having been inadvertently included, should be stricken out.

Q. In respect of the note of William A. Draper for \$2,000, in the list of notes purchased—included in the notes on hand I suppose—what was the origin of that note? A. As I explained the other day, the property No. 443 4th street, northeast, came into the hands of the executors; it was later disposed of, I think by the trustees, and as part of that sale I think the \$2500 Catherine West note was taken as part payment; under the foreclosure on account of that note the trustees accepted this \$2,000 note as part payment for that.

Q. You claim, then, a commission or compensation in respect of that sale, which was the full amount of the sale, and also \$2,000 as one of the notes that were given in respect of that sale; is not that so? A. I should say that is in the same class with the Lee Brown note.

Mr. WILSON: That should come out then.

Mr. MADDOX: I want to state on the record that I made out that memorandum of items on which the trustees ask a commission. I simply took the totals, \$138,237.94. If there are any notes which represent deferred payments of purchase money for real estate purchased by the trustees, they should of course be stricken out. We will look it over and take them all out.

Q. Was there a deed of trust on that lot? A. At what time?

Q. At the time it was sold or just previous thereto. A. 140 Yes sir. The Catherine West note was secured on that.

Q. For how much? A. I think it was \$2500.

Q. Was that paid her? A. Yes sir.

Q. By whom? A. It came out of the proceeds of the foreclosure sale of the property at auction.

A. It did not belong to the estate? A. Yes, the property belonged to the estate and it was sold. In selling that, the trustees took this Catherine West note; default was made, and it was sold under that deed of trust, and as part of the purchase money under that sale this \$2,000 was taken. That was the only way I could get a sale, and I took that as part payment for it. Of course the Catherine West note was paid off out of the proceeds of that sale.

Q. The calculation as to commissions is made on the whole amount

of the sale, is it not? A. That I cannot answer, because Mr. Maddox made up the statement.

Q. From that sale what was actually realized to the estate? A. It was all realized except this \$2,000 note, which was amply secured.

Q. Do you mean that the estate, independently of any existing or previous deeds of trust, realized from the property \$3,904.83? A.

Yes sir; the estate realized every cent that came out of that sale, which Mr. Maddox has put down at \$3904.03.

Q. It realized that amount exactly just as though it had been the property of the estate and not charged with any incumbrance whatever; that the estate realized \$3904.83 net. A. I could not say that, because I do not remember that transaction. Do you mean did I take a note as part payment?

Q. No; I mean to say whether, out of the proceeds of the sale, any incumbrance held by anybody else was paid. A. I cannot tell that. If it was, it was probably paid long before that sale.

Q. Now please state whether that lot was absolutely the property of the trustees, or came to be their property, and whether this sum was realized from the sale, or whether there was first deducted from it whatever incumbrance there was, and if so, what was the incumbrance? A. My recollection is that any prior incumbrance existing was paid sometime prior to the trustees' sale.

Q. Paid by whom? A. Paid by the trustees. And that is indicated by the amount of purchase money there.

Q. So in order to make it a good title the trustees paid off the incumbrance, whatever it was?

Mr. DARLINGTON: I object to that question.

Q. Well, what did they do in regard to any existing incumbrance? I will put the question in that form. A. To the best of my recollection the course of procedure in the case was like it was in any other case; that when the first trust came due and the trustees thought there was anything in the property, they paid off that trust and in that way became the actual owners of all the property.

Q. So when the property was sold, to reimburse them there was first put back the money they had paid out; is that so?

Mr. DARLINGTON: I object to that as argumentative.

Q. All I want to know is whether or not there was advanced by the trustees the sum of money—and if so, how much—in order to get the sum of \$3904.83 on account of which the trustees are now claiming a commission. A. To the best of my recollection the incumbrance on that property was \$2,000.

Q. In respect of the item relating to the sale of lots 6, 7 and 21 in square 550, the amount of sale being stated at \$8,000, will you state whether any notes were given which are included in the notes on hand? A. No sir, none at all. If any were given they were paid.

Q. What incumbrances were there on those lots, and what did

the trustees realize as a net sum from the sale? A. It would be very difficult for me to say from recollection.

Q. Will you look and see what the net amount realized was and whether or not the sum of \$7240 was not deducted from the purchase money before anything went to the trustees? A. The executor paid off the trust of \$6500 there and then acquired that property under foreclosure proceedings.

Q. What else did they pay out of the estate? A. They then charged up the notes they held against the property, amounting to \$950, and of course there had been charged up against the property items of taxes and repairs in handling it; and then in 1902 the property was sold for \$8000.

By Mr. DARLINGTON:

Q. Can you tell us when the executors paid—I mean approximately when? A. I cannot give the date, except that it was prior to the time of the foreclosure in November in 1898.

By Mr. WILSON:

Q. Then the estate actually realized the difference between the \$8,000 and the sums you have mentioned? A. Including any expenditures for accumulated taxes, interest and repairs.

Q. So it is in respect of that \$8,000, the total purchase money, that you make the suggestion of commission. What, if any, fees commissions or profits did the firm of Arms & Drury realize from these transactions other than that which you have already spoken of, in respect to the Wardman notes and the other two? A. Nothing at all. There were no commissions ever paid to any one in our office for any sales of real estate sold by the trust, nor were any trustees' fees ever charged where Mr. Arms and myself, or either of us, were trustees; in fact we rarely paid any trustees' commissions even when outsiders were trustees; we would give them \$5 or \$10 for their trouble and that would be all.

Q. In the paper that was filed on the 8th instant there is a summary of the notes purchased, amounting altogether, as I figure it, with the notes included in the 6th account, to \$202,409 as the total of the notes purchased by Arms & Drury; is that correct? A. No, that is not correct as to the notes purchased by Arms & Drury. That is the total amount of notes as purchased by the trustee.

Q. I understood you to say the other day that about 90 per cent of these were purchased by Arms & Drury. A. I will have to correct that, because I do not think it was much over 65 or 70 per cent at the outside.

Q. In respect of what were purchased by Arms & Drury, the profit made by them you stated was about 1½ per cent. A. It would vary.

Q. What was the average? A. To give you a very liberal answer, I will say 2 per cent. In many cases we got less than that, but I could not begin to tell you in how many cases without looking at every one of them, for instance, in the case of the Lowery note we

only got one per cent; in the Aguilier note, which I looked at, we got about $1\frac{1}{2}$ per cent; and in the case of the Wardman notes we got 2 per cent. The limit would be 2 per cent.

Q. In the second item in the memorandum in relation to additional commissions is the aggregate personal estate transferred into real, \$107,792.40; will you explain how the transfers were made and exactly what that item is composed of? A. Those items are com-

posed of the amounts paid out to relieve the property of any
145 prior encumbrance to the one held by the estate, or in some cases to pay off like the encumbrance on the home; I paid out \$15,000 for that.

Q. Have you any statement of the items that make up that amount of \$107,792.40? A. Not here. I think it was made up from the Auditor's reports.

Q. Does it include the sums belonging to the estate that were used in respect of the encumbrances that were on the property described in this same schedule—for instance in respect of lots 6, 7 and 21 in square 550? A. I am pretty sure those amounts do include those.

Q. And so in respect of the other sales mentioned, lot 51, square 937? A. To the best of my recollection they do, but I am not sure about it.

Q. So this contains a charge or suggestion of charge in respect of the moneys that were used to pay off encumbrances, and also a charge for the whole amount of the purchase money after the encumbrances were discharged? A. It is very difficult for me to answer these questions about a schedule that was prepared by Mr. Maddox.

Q. Can you without much trouble prepare a schedule showing what that sum is made up of?

NOTE.—Mr. Maddox handed Mr. Wilson a paper.

Q. In the same schedule there are items 3 and 4 of the shares of stock of the Bigelow Company and of the Northern Railroad Company; in what shape were those shares and in whose names did they stand when they first came into the possession of the trustees? A.

In the name of William A. Richardson.

146 Q. In both companies? A. Yes.

Q. In whose name do the certificates now stand? A. The same name. The Lowell Manufacturing Company by consolidation with some other corporations was converted into the Bigelow Carpet Company, and that is the only change that has been made in the stock.

Q. And the certificates have been continuously in your possession since you received them, and you have collected the dividends? A. Yes sir.

Q. Who was in charge of Judge Richardson's personal property at the time of his death? A. He had just turned it over to me. He realized that he was going to die told me so, and turned these notes all over to me.

Q. Do you mean to you personally, or to Arms & Drury? A. To me personally.

Q. Who had conducted his business in regard to these things up to the time of his death? A. For the three years previous to that I had done everything for him. For years prior to that he had done business through Mr. Arms, and he introduced Mr. Arms to this second trust business, and together they did it for years; they were doing it when I went in with Mr. Arms.

Q. How do you mean—that they were doing it together? A. It was the Judge's practice to come down to the office every afternoon, and Mr. Arms kept a book especially for Judge Richardson
147 in which all collections were entered and at the end of the week there would be certain notes turned over to Judge Richardson to balance that account.

Q. With whom was the transaction in respect of the actual acquisition of the notes and the arrangement made with the seller or maker of the notes? A. With Mr. Arms; he was acting as Judge Richardson's agent all the time.

Mr. DARLINGTON: I submit that this is entirely immaterial and irrelevant.

Q. In whose possession were the notes and personal property relating to the business that Mr. Richardson had with Mr. Arms or Arms & Drury at the time of Judge Richardson's death? Were they in yours?

NOTE.—The question was objected to by Mr. Darlington as irrelevant, and the auditor sustained the objection on the ground that the matter inquired of does not come within the reference.

Q. In your 6th account I think—if not there, in one of the other accounts—there is a charge of some \$800 for commissions on securities that were transferred from the desperate to the separate. Do you know what I mean? A. Yes. It is what Mr. Maddox is pleased to call a bookkeeping entry, which on the face of it did not appeal to the auditor, and on which he allowed a commission, but which we declined to take; it amounted to \$849.98.

Q. It is conceded that that was never paid. A. Never paid.

Q. And should not be allowed? A. No sir. That was in
148 the same class as the second trust notes for which we make no charge for commissions.

Q. Anything else belong in that class? A. I do not know of anything else.

Q. In this memorandum of moneys taken from the personal estate and put into real estate, the real estate that was actually purchased as I understand, was the farm Araby and two other pieces; is that so? A. By "actually purchased" do you mean where we did not hold any encumbrance and foreclosed?

Q. Yes. A. There was but one piece, and that was Araby. The trust estate acquired no real estate except what it had to acquire in order to protect itself.

Q. As it is, you do not make any claim? A. None whatever excepting Araby.

Q. In respect of the first item of the credits in your first account

I would like to understand exactly your position as a trustee concerning that item, which I understand you to say is incorrect. A. Yes sir.

Q. And that the facts were that you, from the moneys or assets in your hands, had received the \$18,800 and made the disposition of it that you have stated. A. Yes.

Q. And that the difference between what you paid out and the \$18,800 you retained as compensation for your services as executor from the time of your appointment until the appointment of the trustees; is that correct? A. Yes sir.

149 Q. And that in respect of making any charge for your services or in respect of indicating what you considered your services were worth you had nothing whatever to do? A. Nothing at all; never made a suggestion even.

Q. You recommended, of course, the allowance as it appears here? A. Yes sir.

Q. What, if anything, had your co-trustee to do with determining the amount to be allowed? A. That I do not know, unless he made some suggestion to Mr. Weir.

Q. I mean to your knowledge. A. I have no knowledge.

Q. At the time that compensation was arranged for you had been appointed and were a trustee? A. Yes, I think a few days before we had been appointed trustees by the court here.

Q. And as trustee you advised this allowance; is that so?

Mr. DARLINGTON: I object; the papers will speak for themselves.

Q. Do you remember advising or recommending this allowance?

Mr. DARLINGTON: I still object, as immaterial.

NOTE.—The Auditor sustained the objection.

Q. You can give no further explanation than you have already given in respect of how that amount of compensation was determined upon, and for what, and the circumstances attending it? A.

150 No sir, I cannot. I have stated it as fully as I recollect.

Redirect examination.

By Mr. DARLINGTON:

Q. You say with respect to this memorandum of moneys taken from personal estate and put into real estate still in the trust, that it was prepared not by you but by Mr. Maddox? A. Yes sir.

Q. Are you able to state whether or not any sums are included in this memorandum which were used to pay encumbrances on property, which property has been sold? A. No sir.

Q. Can you prepare and furnish us a statement showing just what profit to you has resulted from any insurance premiums on property of the estate placed by Arms & Drury? A. I can, yes sir.

Q. You state that the profit on notes purchased for the estate by Arms & Drury would be, liberally stated, about 2 per cent; who paid that profit? A. The borrower in each case.

Q. And he paid it for what? A. Paid it to Arms & Drury, as brokers, for loaning the money.

Q. Before or at the time of the sale of these notes to the estate?
A. Before.

Q. What profit, if any, was realized by Arms & Drury or by yourself from the sale of these notes to the estate? A. None
151 at all.

SAMUEL MADDOX was recalled and testified further as follows:

By Mr. DARLINGTON:

Q. Attention has been called to a recommendation made by the trustees, together with the other parties in interest, that the Massachusetts executors' account should be allowed; do you wish to make any statement about your connection with that recommendation?
A. I remember signing the recommendation. My coexecutor was Mr. George F. Richardson, the brother of Judge Richardson. Mr. Weir came down to Washington to help Mr. Richardson in preparing the executors' final account which was necessary to be completed in a very great hurry. I had nothing whatever to do with the items; those were prepared by Mr. Weir. With regard to the \$18,800 it was explained that it was to be an allowance to the executors for their work and to pay the costs attending the tax suit at Cambridge. I understood at the time that the balance remaining after paying those costs and the expenses was to be a commission for the executors, and I signed the recommendation.

Q. By whom was that explanation made to you? A. By Mr. Weir. I knew nothing of the course of procedure in Massachusetts courts, and did not undertake to interfere or make suggestions.

Q. Does it appear why there was this great hurry to get the account filed? A. Yes. We were in a very great hurry to get the personal estate out of the jurisdiction of the Massachusetts
152 court because on the 1st of May following another tax year would begin, and we were exceedingly anxious, under the advice of Mr. Moody, to close the executors' account in Massachusetts before the 1st of May.

Cross-examination.

By Mr. WILSON:

Q. When did you first make inquiry of Mr. Weir? A. In Lowell, I should say in February, 1899—it may have been March. I went on there to see Mr. Richardson about the defense of the tax suits, and Mr. Weir was in his office, and also young Mr. George F. Richardson, a lawyer.

Q. When was that? A. I say in February or March as I remember.

Q. That was before you were appointed trustee? A. That was before I was appointed trustee.

Q. You were appointed trustee on the 1st of April. A. On the 1st of April, 1899; qualified on the 4th and receipted for the assets of the estate on the 24th or 25th.

Q. And this recommendation or application was made on the 25th of April? A. About that time.

Q. What personal knowledge have you of the making up of that account? A. Practically none.

Q. By whom was it actually made? A. I do not know.

Q. When and from whom did you first hear mention of the \$18,000 as commission? A. I do not remember that, Mr. Wilson.

153 Q. As nearly as you can. A. I cannot remember.

Q. You do not know when? A. I do not know.

Q. Upon what representation did you, as trustee, recommend the approval of that account? A. Upon the representations of Mr. Weir. I did not attempt in any way to interfere with the management of this account in Cambridge or make any suggestions with regard to it.

Q. What was represented to you as the reason for fixing that account? A. I say I don't know anything about it; I didn't have anything to do with it.

Q. How, as trustee, could you recommend the payment or allowance of it without knowing what is was based on? A. For that I trusted to Mr. Richardson. I thought he would do what was right up there and that he knew about what compensation was allowed executors in Massachusetts.

Q. You did not know? A. No, I did not know.

Q. You did not observe that there was a provision in the Massachusetts law that no commissions should be allowed? A. I did not know that at the time. In my opinion the executors were fairly entitled to that compensation.

Q. What is the basis of that opinion? A. The character of the estate.

Q. Did you think that and did you say so at the time?

154 A. I did not say so at any time until now.

Q. The services extended over about two and one-half years? A. Yes.

Q. For which the executors received that amount of compensation—was that understood? A. The amount of their compensation was based more on the character of the estate than upon the time during which they were occupied in the work. There was a great mass of notes, I think as many as three thousand, secured by second trust and unsecured.

Q. When you went to Massachusetts and prior to your appointment as trustee what were your relations to the business? A. I simply was counsel for the Magruder children to defend them against those tax suits brought against the executors in Cambridge. I had nothing whatever to do with representing the executors.

Q. You did not represent Mr. Drury? A. No, I did not. I filed this bill in behalf of the Magruder children to enjoin Mr. Drury from paying the taxes for which suit had been brought in Massachusetts.

Q. Who represented Mr. Drury in that suit? A. Mr. Drury was not represented, further than he agreed with me that the children ought not to be required to pay the taxes amounting to some \$15,000.

Q. There was no adversary proceeding, then, as between the com-

plainant and defendant? A. To this extent there was: that Mr. George F. Richardson would not consent to join in the defense of the suit in Massachusetts; he said the money ought to be paid; and when I filed a bill here making him and Mr. Drury defendants, seeking an injunction, Mr. Richardson would not submit to the jurisdiction of the court; I therefore amended the bill and made Mr. Drury sole defendant, and got a temporary restraining order; and it was not till then that I ever got any sympathy from Mr. George F. Richardson for my attempted defense of these suits. Mr. Richardson said the money would have to be paid.

Q. Was the other executor opposed to the suit? A. He was opposed to the suit here. He was opposed to my injunction suit, yes.

Q. I think it has already appeared that he refused to take any commissions. A. Yes. He would have had to pay \$15,000 but for this suit here; and my recollection is that before he would consent to a final accounting in Massachusetts and turning over the assets of the estate to Mr. Drury, he required us to give a bond against a possible judgment in the tax suits, saving him harmless, and as I remember I went on that bond.

Q. Did you have any interviews with Mr. Richardson? A. Oh, several. He insisted that the suits would go against me; and so did Mr. Moody, by the way, at first.

Mr. WILSON: A list of notes has been referred to once or twice, some of which notes were held to be not good, and some of which the trustees say they refused to receive from the executors. Those notes amount to \$30,000 or \$40,000 and they are still as I understand in the possession of the trustees. I think those notes should be produced with a list of them, so that we may have some knowledge of whether they are good or bad, and those in the possession of the trustees ought to be handed over to be disposed of.

The WITNESS: These notes were all accounted for in previous auditor's reports, and on Saturday last I tendered a batch of them to Mr. White, Mr. Wilson's assistant.

Q. Any list of them. A. They are listed in the Auditor's reports. I can have a list made, though it is about a two days' job.

Mr. WILSON: I think they should be accounted for in this audit.

The WITNESS: I think they have all been accounted for in previous audits.

The AUDITOR: I think this subject was discussed once certainly, if not twice, during this reference, and it was suggested that the trustees were not responsible for those notes; then I suggested that Mr. Drury was responsible for them as executor. As between the trustees and the sole executor some one is responsible for those notes; and it was then said that there would be a list prepared.

Mr. WILSON: I insist, as a matter of justice and propriety, that there should be produced to the auditor by the executor and by the trustees, for final disposition, these notes they have but which they say are of no account.

The WITNESS: I will have the list made up.

The following notes ought not to be included in the aggregate of \$138,237.94:

Lee Brown	\$2,000
W. A. Draper	2,000
C. H. Herr	140
Lee Brown	1,373.94
Emma Morrissey	170
John C. Payne	1,900
Leopold Richold	4,000
Leopold Richold	5,000
Jesse Robinson	6,000

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MAGRUDER
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TUESDAY, *July 13, 1909.*

Met pursuant to adjournment.

Present: Mr. White, representing Mr. Wilson, for the complainant; Mr. Maddox and Mr. Darlington for the defendant.

Further testimony of SAMUEL A. DRURY.

By Mr. DARLINGTON:

Q. Will you tell us this morning what was your share of insurance premiums on policies issued on the property of the estate by or through Arms & Drury? A. I figured it up very carefully, and find it to be \$97.52.

Q. That is your share of the insurance commissions? A. Yes, sir.

Mr. Maddox filed an amended copy of exhibit S. M. No. 4 filed at the former hearing of June 11, showing the personal estate passing through the hands of the trustees and accounted for.

Mr. MADDOX: From time to time in the accounting before the Auditor fees were allowed me as counsel. I submit a memorandum for reference, showing what those fees were, and when and why they were allowed.

In the first report there was an amount of \$350 which was for work done before I became trustee, and in the report filed February 21, 1906, there was an allowance of \$200 for quieting title to certain real estate belonging to the trust.

158 (NOTE.—Said memorandum is marked Exhibit S. M. No 5.)

Equity. No. 20037.

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WEDNESDAY, *October 20, 1909*—10.00 a. m.

Present: Mr. Maddox.

Mr. Maddox makes the following statement.

At the hearing on July 12th, 1909, near the close, Mr. Wilson referred to the fact that he had many times tried to get from the trustees the notes which were charged off as "worthless" in their first accounting before the Auditor. At the time I was just about to start out on my summer vacation, and actually left the City on the 14th.

On my return in September Mr. Drury and I hunted up all of the notes so charged off as "worthless" made a list of them and held them subject to Mr. Wilson's order. One day his assistant, Mr. White came to my office and I then tendered him the notes done up in envelopes, separately, and requested him to look them over, compare them carefully with the memorandums given him here in our accounting before the Auditor, sign a receipt for them, and take them away. He then stated that he did not have time to do this, but might do so some days later. After waiting probably a week or ten days I wrote Mr. Wilson a letter calling his direct personal attention to the fact that these notes were ready to be delivered to him, and I was very anxious to get rid of them.

159 He paid no attention to my letter, at least he did not send anyone down to get the notes.

One day last week I met him on the street in front of the Court House, and insisted that he at least go to my office and look at these notes. This he did but he declined to take them away or receipt for them.

The notes are very much in our way, occupying valuable space in our safe in our building, and I am very anxious to get rid of them. Acting on this idea I wrote Mr. Wilson on Monday that I would bring them to the Auditor's office at 10:00 today to be delivered to him. The notes are here now.

First. Notes mentioned in Schedule *bh* as being notes and claims in the inventory which were not accepted by the trustees, aggregating \$21,876.82. All of the notes mentioned in this list are here except a little note in which there is a balance due of \$150. This note as reduced was given to Mr. H. S. Cummings, as explained.

Second. Schedule *Bh*—desperate notes charged off in the first account of the Auditor, aggregating \$26,907.96, these notes are all here excepting a little note of one H. G. Gilbert for \$190.00. This note was given to me by Mr. Drury for collection before I qualified as trustee. I gave the matter careful examination and requested payment of Mr. Gilbert. He seemed unable to make payment and examination disclosed there would seem to be many unsatisfied

judgments on the dockets of the Supreme Court of the District of Columbia. I therefore advised Mr. Drury that no good purpose would be obtained by undertaking the cost necessary to secure judgment.

Third. A lot of notes, some of which were charged against properties subsequently conveyed to the executors and trustees; and others taken in the hope of bettering the estate.

All were finally abandoned.

We mean by this that where property on which the estate had a second trust was foreclosed and bought in by the trustee the notes remaining unpaid were charged off as being of no value. The makers of these notes in no instance were men of any personal responsibility.

Adjourned.

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WEDNESDAY, *February 9, 1910*—2.00 p. m.

Hearing pursuant to notice.

Present: Mr. Maddox and Mr. Wilson.

Mr. MADDOX: In the memorandum for the sixth account of the trustees, of date of January 17, 1909, there are set out in detail the articles of personal property and furniture, certificates of stock, promissory notes, and certain real estate constituting the entire estate in the hands of the trustees.

On the 10th day of July 1909 I delivered to Mr. Wilson for these beneficiaries, deeds conveying all of the real estate shown on the memorandum, and all of the household furniture, of which Alexander Magruder and his sister took possession, and all of the promissory notes shown on that memorandum except nine, also
161 excepting some cash. Mr. Maddox here offered the original receipt in evidence. Copy marked Exhibit S. M. #6. In the Supplemental account of the trustees filed with the Auditor September 27, 1909, the trustees charge themselves with having received in cash the full amount of the notes reserved when the rest were turned over to Mr. Wilson, and show the balance of cash then in their hands and now in their hands to be \$15,526.41. I submit a memo. showing notes not included in the receipt of Mr. Wilson but since paid as shown in the supplemental account. Exhibit S. M. No. 7.

At a hearing before the Auditor on the 12th of July Mr. Wilson insisted that the trustees bring to the Auditor's office for disposition certain notes which were charged off as worthless,—first a list aggregating \$21,816.83 which the trustees declined to receive from the executor,—second, a list of notes aggregating \$26,907.92 which were charged off in the Auditor's first report as being worthless.

Mr. Drury and myself as trustees proceeded in digging up all of these old notes from a great mass of papers and correspondence

we had pertaining to the estate. When I had them all in order I requested Mr. Wilson's assistant, Mr. White, who happened in my office to take them away. He declined to do this. Some days afterwards I met Mr. Wilson in front of my office and asked him to please come in, get these notes and take them away. This he declined to do. Subsequently I gave him notice that I would produce the notes before the Auditor as he had requested that I do, and brought them here on the day appointed. Mr. Wilson did not appear.

162 I then took them back to my office and I think wrote him a letter asking that he come and get them, but he did not come.

Then sometime in October I myself took these notes to Mr. Wilson's office and left them there, together with a memorandum or list of every note that the trustees had charged off during their performance of the trustee undertaken by them. Since that time I have had from Mr. Wilson no word of any kind with regard to his having received the notes. A few days ago when I was in his office looking for another paper, Mr. White told me, pointing to a bunch of notes on Mr. Wilson's private office desk, "there are those old notes." I inquired if he had gone over them and he said, "No."

For a great many years I have been the intimate personal friend of Dr. A. F. Magruder, the father of Alexandre R. Magruder. He lived from the time of Judge Richardson's death until the spring of last year at 1739 M Street. While there I frequently went to his house, constantly saw Alexandre while he was a small boy and occasionally helped him a little with his Latin lessons. I do not quite recall what year it was he went to Harvard, but it was probably about 1902. Then I would only see him in the summer months. I think at the Easter Recess of Harvard of 1906 Alexandre came here and visited his father for a couple of weeks. I then called his attention to the provision of his grand-father's will which nominated him as "co-executor" with the other executors. The will provided that this nomination was made because "Alexandre has a special interest in some trust estates in my hands which he can look to when he becomes older, and because I am anxious that Alexandre should also learn a knowledge of business and acquire good business ideas and habits, and I join him as one of the co-executors because I felt that it will afford him an opportunity of doing so."

On the 18th of April 1906 at his request, I filed a petition for him in this cause, reciting the provisions of his grand-father's will and stating that in June of the current year he would finish his course of studies at Harvard and that he would "thereafter be in a position to take an active part in the further care, preservation and administration of his grand-father's estate". An order appointing him trustee was passed by the Equity Court on the date of the petition. Alexandre was graduated in June or July 1906 from Harvard, but instead of coming to Washington to live he went into some sort of business in New York, and I do not think he visited Washington more than two or three times a year. Subsequently and during 1907 he married, continued for a while in business in New York, and then as I understand it, went to Lowell to live, rarely coming

to Washington. In the fall of 1908 he and his wife came to Washington to live, but remained here only a month or two and then returned to Lowell or somewhere else.

During all the time that Alexandre was nominally a trustee he did absolutely nothing as such. I tried to interest him in matters pertaining to the estate, but never could and even suggested to him that after leaving Harvard he had better come here and familiarize himself with the management of real estate and real estate loans of which the property mainly consisted, but he either declined or neglected to do so, and never that I know of did he do anything in the nature of work as a trustee or work for the estate.

By Mr. WILSON:

Q. Your feelings towards Alexandre and his feelings towards you are not now friendly? A. I don't know. No, I should not say that they were. I have nothing at all against him.

Q. How long have your feelings been unfriendly? A. They are not exactly unfriendly so much as they were probably strained, and it was because I insisted that he ought to make a deed conveying to his father a life estate in the Frederick farm known as Araby. When Mr. Magruder, the father, was ill at one time and likely to die, Judge Richardson persuaded him, Dr. Magruder, to convey certain property which he had by inheritance to him, Judge Richardson, to hold in trust to pay the income and rents of the real estate to Dr. Magruder's sister for her life and on her death to give the property to Dr. Magruder's two children. Dr. Magruder got well and found that by this deed in trust which he was persuaded to execute by Judge Richardson he had entirely cut himself out of his own inheritance. I therefore suggested to Alexandre that the least he could do was to give Dr. Magruder a life estate in the property at Araby which did not cost as much as Dr. Magruder's interest in the property conveyed in trust was worth. Alexandre's hesitation and final refusal to do this is what occasioned the strained relations between us. I do not care to have any further friendly relations with a son like that.

Q. When was that, approximately? A. I should say that was in 1907 or maybe 1906. It was before he left Harvard? I saw him once in Boston and probably while he was still at Harvard.

Q. You thought he was not a final son and did not care to recognize the relations of his father, and he thought you were meddling with a matter that did not concern you? A. I suppose so.

Q. And he thought and said you were much more concerned with his father's estate than you were in his interest? A. If he did not say it,—it was certainly a fact.

Q. Did you ever ask him to do any specific thing as trustee which he refused to do? A. Not any specific thing. I asked him to come and help in the matter.

Q. Considering your relations, his acting as trustee would have been disagreeable. A. I could have treated him and dealt with him in a matter of business. He never offered to do anything,—

never asked if there was anything he could do, but persistently remained away from town, to engage in other business, as I understand.

Q. Alexandre was appointed a trustee with you in the Magruder trust? A. I have just looked over the order appointing and it does not say anything about that. I should say he was not trustee of the Magruder estate.

By Mr. MADDOX: Mr. Wilson, has such disposition been made of these notes as meets with your approval?

A. They are held by me subject to the order of the parties owning them, namely, the heirs and beneficiaries so far as

I know, there has been no suggestion and never has been any suggestion that the trustees have not acted and looked after them and done the best they could in regard to any of these notes.

Mr. MADDOX: In a petition filed in this cause on the 16th day of June 1909 by Alexandre Magruder and his sister, he says, "This petitioner, Alexandre R. Magruder, has had as trustee, no active participation in the management thereof, nor in the execution of the aforesaid trust."

Adjourned.

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FEBRUARY 16, 1910.

Mr. Maddox and Mr. Wilson, and Mr. Drury.

Mr. Drury in behalf of the trustees submitted to the Auditor his original books of account.

167 *Inventory.*

COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

Probate Court.

[SEAL.] To Watson J. Newton, Elkanah W. Waters, and James W. Greer, Greeting:

You are hereby appointed to appraise, on oath, the estate and effects of William A. Richardson, late of Cambridge, in said county of Middlesex, deceased, testate, which may be in said Commonwealth. When you have performed that service, you will deliver this order, with your doings in pursuance thereof, to George F. Richardson and Samuel A. Drury, the executors of the last will and testament of said deceased, that they may return the same to the Probate Court for said county of Middlesex.

Witness my hand and seal of said court this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and ninety-six.

S. H. FOLSOM,
Register of Probate Court.

DISTRICT OF COLUMBIA, ss:

FEBRUARY 16, A. D. 1897.

Then the above-named appraisers personally appeared and made oath that they would faithfully and impartially discharge the trust imposed in them by the foregoing order.

Before me—

[NOTARIAL SEAL.]

EMMA M. GILLETT,
Notary Public.

168 Pursuant to the foregoing order to us directed, we have appraised said estate as follows, to wit:

Amount of personal estate as per schedule exhibited... \$328,124.57
Amount of real estate as per schedule exhibited..... 39,800.00

WATSON J. NEWTON,
ELKANAH N. WATERS,
JAMES W. GREER,
Appraisers.

FEBRUARY 23^d, A. D. 1897.

Then personally appeared Samuel A. Drury, one of the executors of the will of said deceased, and made oath that the foregoing is a true and perfect inventory of all the estate of said deceased that has come to his possession or knowledge.

Before me—

[NOTARIAL SEAL.]

EMMA M. GILLETT,
Notary Public.

Schedule of Personal Estate in Detail.

Cash in bank.....	\$8,711.18
United States draft.....	232.34
Household furniture and effects shown in annexed Schedule A.....	3,710.00
Carriages, &c.: 1 landau, \$500; 1 victoria, \$150; 1 horse, \$75; harness, robes, &c., \$100	825.00
169 Notes secured on real estate in Washington, D. C., as per annexed Schedule B.....	216,755.05
Notes payable monthly secured by second deed of trust on real estate in Washington, D. C., as per annexed Schedule C..	76,961.00
Notes partially secured on real estate or collateral of less than face value, as per annexed Schedule F.....	9,750.00
Note of John S. Boutwelle on demand, interest paid to Nov. 3, 1896.....	900.00

Notes of Harrison Cooke and Wm. Fletcher, \$1,000 each, payable in 3 and 4 years, respectively, from Nov. 3/93, secured by mortgage in Dakota, at 6%.	2,000.00	
Note of D. W. Gregory, due Feb. 18, 97.	155.00	
34 shares of Northern R. R. Stock.	5,270.00	
5 shares of Lowell Mfg. Co.	2,625.00	
350 shares of Universal Car Coupler Co. Value unknown		
Unused portion of burial lot, Oak Hill Cemetery	230.00	\$328,124.57
Notes doubtful in the opinion of the appraisers and on which no value can be placed is shown in annexed Schedule D	5,995.00	
Notes considered as of no value by the appraisers are shown in annexed Schedule E	32,619.78	

Schedule of Real Estate in Detail.

House numbered 814 12th St. N. E., being lot 119, Sq. 981	\$3,000	
House numbered 443 4th St. N. E., being lot 37, Sq. 812	2,750	
170 House numbered 1121 15th St. N. W., being parts of lots 10 and 12, Sq. 214	8,000	
House numbered 441 Franklin	800	
House N. E. corner 18th and H Sts. N. W., being lot —, Sq. —, value \$35,000 less an incumbrance of \$15,000	20,000	
Lot 71, Sq. 887	1,500	
Property in Manchester Road, in the City of St. Louis, Mo., inquiry develops to be worth \$50 per front foot, with the improvements of \$2,000, total value.	3,500	
Interest in 10 acres of land at Colorado.	250	
		\$39,800.00

171

Petition and Decree to Pay Over Funds, &c.

Filed with Auditor March 16, 1910.

To the Honorable the Judge of the Probate Court in and for the County of Middlesex:

Respectfully represent George F. Richardson, of Lowell, in our County of Middlesex, and Samuel A. Drury, of Washington, in the District of Columbia, that on the 28th day of October 1896 a certain instrument purporting to be the last will and testament of William

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A. Richardson, was duly proved, approved, and allowed by said Court: that your petitioners, the executors named in said will were duly appointed, and accepted said trust and gave bond according to law and gave due notice of their appointment as such executors: that there was not at the time of the granting of letters testamentary to your petitioners and has not been since granting said letters and property belonging to the estate of said testator in this Commonwealth; that since the granting of letters testamentary Isabel Magruder, the only surviving child and heir at law of the said testator has deceased, and that under and by the terms and provisions of said will it is provided that upon her decease the property of the testator should be held by the executors of said will for the benefit of the two minor children surviving the said daughter, namely, Alexander Richardson Magruder, of the age of sixteen years, and Isabel Richardson Magruder, of the age of about thirteen years, children of the said Isabel Magruder: that the only living parties, to wit:

172 the said Alexander R. Magruder and Isabel R. Magruder, who are interested as beneficiaries in the trusts created by the said will, at the time of the probate of said will and ever since, have resided out of this Commonwealth, to wit: at Washington, in the District of Columbia; that Samuel Maddox and Samuel A. Drury, both of said Washington, have been appointed by the proper Court in said Washington, to wit: the Supreme Court of District of Columbia, trustees for said minors to carry out the provisions of said will made in behalf of said minors; that Alexander F. Magruder has been appointed by said Supreme Court of the District of Columbia guardian of said minors, and has duly accepted said trust.

And said executors further represent that said William A. Richardson, at the time of his decease, was not a resident of Massachusetts, but was a resident of said Washington, and that all the parties in interest under the trust under said will at the time of the probate of said will, lived out of the Commonwealth, to wit: at said Washington, and that all the parties now in interest under the trusts under said will now reside, and have since the probate of said will resided out of said Commonwealth, to wit: at said Washington, and that said will should not have been probated in said Probate Court, but should have been probated at said Washington, the last place of residence of said deceased.

Wherefore your petitioners, without waiving their rights as to the jurisdiction of this Court to probate said will, but insisting that the same was probated in this Court by accident and mistake
173 and should have been probated at said Washington, pray that they be authorized to pay over said trust funds to said trustees appointed in said Supreme Court of the District of Columbia as aforesaid, and that upon such payment they may be discharged from further responsibility by decree of this Court.

GEORGE F. RICHARDSON,

SAMUEL A. DRURY,

Executors Will of William A. Richardson.

I, Alexander F. Magruder, of Washington, in the District of Columbia, duly appointed by the Supreme Court of the District of Columbia, guardian of the above named Alexander Richardson Magruder and Isabel Richardson Magruder, minors and grandchildren as aforesaid of the said William A. Richardson, hereby signify my consent as such guardian to the granting of the above petition and respectfully request that authority be given the said executors under the will of the said William A. Richardson to pay over the trust funds in their hands to the trustees appointed by the Supreme Court of the District of Columbia.

A. F. MAGRUDER.

Washington, D. C., April 4, 1899.

A true copy.

Attest:

W. E. ROGERS, *Register*.

174 *Decree Authorizing Executors to Pay Over Trust Funds, &c.*

Filed with Auditor March 16, 1910.

COMMONWEALTH OF MASSACHUSETTS,

Middlesex, ss:

At a Probate Court Holden at Cambridge, in and for said County of Middlesex, on the eleventh day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

On the petition of George F. Richardson and Samuel A. Drury, Executors of the last will of William A. Richardson, praying that they, the said George F. Richardson and Samuel A. Drury, Executors as aforesaid, be authorized to pay over all the trust funds held in trust by them, the said George F. Richardson and Samuel A. Drury, Executors as aforesaid, to Samuel Maddox and Samuel A. Drury, both of Washington in the District of Columbia, duly appointed by the Supreme Court of the District of Columbia Trustees under the will of the said William A. Richardson.

It appearing that all living parties who are interested in the said trust created by the will of the said William A. Richardson reside out of the Commonwealth, to wit, in Washington in the District of Columbia, and it further appearing by a decree of the said Supreme Court of the District of Columbia, dated the first day of April, A. D. 1899, a copy whereof is filed with said petition that Samuel Maddox and Samuel A. Drury were duly appointed trustees to perform

the trusts created in and by the will of the said William A. Richardson, and it further appearing that the only living cestui- que trust are Alexander R. Magruder and Isabel R. Magruder, minors, and residents of said Washington in the District of Columbia, and that Alexander F. Magruder, of said Washington, guardian of the said minors, by virtue of an appointment made by the said Supreme Court of the District of Columbia, dated the

thirtieth day of April, A. D. 1898, has signified his consent as such guardian to the granting of the petition aforesaid; and it further appearing to the satisfaction of the Court that the laws of the District of Columbia secure the due performance of said trust, and it being deemed just and expedient so to do:

It is hereby decreed that the said George F. Richardson and Samuel A. Drury, Executors as aforesaid, be and hereby are authorized and directed to pay over the said trust funds to the said Samuel Maddox and Samuel A. Drury, Trustees as aforesaid.

CHAS. J. McINTIRE,

Judge of Probate Court.

A true copy.

Attest:

W. E. ROGERS, *Register.*

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Trustees' Account—Massachusetts Court.

(Filed April 25, 1899.)

(RULE IX. "No executor or administrator shall receive any compensation by way of a commission upon the estate by him administered, but shall be allowed his reasonable expenses incurred in the execution of his trust, and such compensation for his services as the court in each case may deem just and reasonable. The account shall contain an itemized statement of the expense incurred, and shall be accompanied by a statement of the nature of the services rendered and of such other matters as may be necessary to enable the court to determine what compensation is reasonable.")

The first and final account of George F. Richardson and Samuel A. Drury, executors of the last will and testament of William A. Richardson, alleged in the petition for the probate of will and appointment of executors to have been late of Cambridge, in the county of Middlesex, deceased.

This account is for the period beginning with the 24th day of November, A. D. 1896, and ending with the 24th day of April A. D. 1899.

Said accountants charge themselves with the several amounts received, as stated in Schedule A, herewith exhibited

\$415,458.37

And ask to be allowed for sundry payments and charges, as stated in Schedule B, herewith exhibited

415,458.37

Balance as stated in Schedule C, herewith exhibited...

000.000.00

GEORGE F. RICHARDSON.
SAMUEL A. DRURY.

Executors.

The undersigned, being all persons interested (Isabel R. Magruder, the daughter of the said William A. Richardson, having died in April, 1898), having examined the foregoing account, request that the same may be allowed without further notice.

ALEXANDER R. MAGRUDER,
ISABEL R. MAGRUDER,
By Their Guardian, ALEXANDER F. MAGRUDER
SAMUEL MADDOX, *Trustee*,
SAMUEL A. DRURY, *Trustee*.

COMMONWEALTH OF MASSACHUSETTS,

Middlesex, ss:

At a Probate Court held at Cambridge, in said County, on the
Twenty-fifth Day of April, A. D. 1899.

The foregoing account having been presented for allowance, and verified by the oath of the accountant, and all persons interested having consented thereto in writing, and no objection being made thereto, and the same having been examined and considered by the court:

It is decreed that said account be allowed.

CHAS. J. McINTIRE,
Judge of Probate Court.

SCHEDULE A.

Amount of personal property, according to inventory, or balance of next prior account,	\$328,124.57
Amounts received from income, gain on sale of personal property over appraised value, and from other property as follows:	
Amount of overdraft collected from Ida C. Magruder,	576.72
Discount on notes	1,200.25
Interest on notes	37,593.77
Dividends on stocks	1,005.00
Receipts from real estate	7,218.96
Amount collected a/c H. D. Cooke matters,	1,000.00
Amount of personal property inventoried as doubtful	5,995.00
Amount of personal property inventoried as of "No Value"	32,619.78
Net credit to Ida C. Magruder Trust Estate,	124.32
	<hr/>
	\$415,458.37

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SCHEDULE B.

Showing Payments, Charges, Losses, and Distributions.

Cost attending probate of will.....	\$311.75
Funeral expenses of Judge Richardson.....	325.50
Bills contracted by Judge Richardson.....	440.02
Medical attendance for Judge Richardson.....	70.00
Funeral expenses of Isabel R. Magruder.....	327.00
Amount paid Isabel R. Magruder.....	17,400.00
Amount paid to A. F. Magruder, guardian.....	8,200.00
Maintenance of children, tuition, etc.....	303.21
Attorneys' fees	121.00
Printing and distributing "Life of Wm. A. Richardson"	1,222.45
Insurance on furniture	24.00
Expended on real estate in repairs, taxes, prior mortgages, etc.	49,705.31
Amount paid for various trust estates held by Judge Richardson	16,731.64
Net amount paid out on H. D. Cooke matters.....	318.57
Protest fees	19.30
Postage	95.00
Stationery	11.91
Expense of administration, including care of property, the payment of debts, the making of final account, the collection of notes amounting to \$226,607.54, the investment in trust notes of \$166,958.21, the collection from interest and	
180 other sources of \$58,168.94, the payment of about \$50,000 for repairs on real estate, the taking up of prior mortgages, taxes, etc., including also the payments of moneys to Isabel Magruder and to Alexander F. Magruder, the guardian of their minor children, counsel fees incurred in the defense of suits for taxes in Massachusetts and for counsel fees in Washington, etc.,	18,800.00

The following money and property have been paid, delivered and transferred to Samuel Maddox and Samuel A. Drury, trustees, appointed by the Supreme Court of the District of Columbia:

Cash	7,332.31
Household furniture	2,710.00
Carriages, &c.	725.00
Stocks	7,895.00
Unused portion of burial lot.....	230.00
Claim against the United States.....	1,000.00
Claim against Desmond Alley property.....	300.00
Notes secured and unsecured.....	279,839.40

\$415,458.37

We, Samuel Maddox and Samuel A. Drury, trustees under the will of William A. Richardson, by appointment of the Supreme Court of the District of Columbia, hereby acknowledge that as trustees we have received the property set forth in the last eight items of the foregoing account.

SAMUEL MADDOX.
SAMUEL A. DRURY.

A true copy.

Attest:

W. E. ROGERS, *Register*.

MIDDLESEX, ss:

APRIL 24, A. D. 1899.

Then appeared the within named George F. Richardson and made oath that the within account is just and true.

Before me—

GEORGE R. RICHARDSON,
Justice of the Peace.

APRIL 24, A. D. 1899.

DISTRICT OF COLUMBIA, ss:

Then appeared the within named Samuel A. Drury and made oath that the within account is just and true.

Before me—

[NOTARIAL SEAL.]

ALFRED E. DENT,
Notary Public.

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Sixth Account of Trustees.

Filed Before Auditor.

To and Including January 17, 1909.

Dr.

To principal personal estate in hand per last report of Auditor as follows:

Household furniture and effects.....	\$1,500.00
34 shares of stock of Northern Railroad Company	5,270.00
35 shares of stock of Bigelow Carpet Company..	2,625.00
Promissory note	138,642.00
Furniture, stock and implements of farm "Araby"	1,200.00
Cash	1,389.81
To proceeds sale 421 9th St., N. E.....	3,400.00
To $\frac{1}{2}$ judgment vs. U. S.....	500.00
To amount added from income.....	974.61

\$155,501.42

Balance of principal personal estate as follows:

Household furniture and effects..	\$1,500.00	
34 shares of stock of Northern Railroad Company	5,270.00	
35 shares of stock of Bigelow Carpet Company	2,625.00	
Promissory notes on hand.....	138,237.94	
Furniture, stock and implements on farm "Araby"	1,200.00	
Cash	6,668.48	
		<hr/>
		\$155,501.42

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Principal Cash Account.

To Balance in hand per last report.....	\$1,389.81
" Principal of notes collected.....	27,400.06
" Proceeds sale 421 9th St., N. E.....	3,400.00
" 1/2 of judgment vs. U. S.....	500.00
	<hr/>
	\$32,689.87
" Balance from income account.....	974.61
	<hr/>
	\$33,664.48

Cr.

By purchase of notes	26,996.00
	<hr/>
Cash on hand.....	\$6,668.48

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Note Account.

Notes in hand per last report of Auditor.....	\$138,642.00
Notes paid as per schedule.....	27,400.06
	<hr/>
	\$111,241.94
Notes purchased as per schedule.....	26,996.94
	<hr/>
	\$138,237.94

Balance notes in hand as follows:

Aguila, Y., 2 of \$500	\$1,000.00
Brewer, M. B.	500.00
Brown, Lee	2,000.00
Brown, Lee, Bal.	1,373.94
Crowdy, W. S.	500.00
Dangerfield, W. B.	3,000.00
Draper, W. A.	2,000.00
Engler, Mary R.	1,000.00
Groff, D. B., 4 of \$2,500	10,000.00
1 of \$2,000	2,000.00
Bal. instalments	2,000.00
1 note	5,440.00

Herr, C. H.	140.00
Holman, B. W.	2,500.00
Hubbard, V. A.	1,750.00
King, C. W., Jr., 4 of \$1,000	4,000.00
King, C. W., Jr., 4 of \$500	2,000.00
King, C. W., 2 of \$15,000	30,000.00
Lowery, Geo. C., 2 of \$1,000, 1 of \$500	2,500.00
McLeran, John E.	3,500.00
Mazzie, F. A. & E.	4,000.00
185 Morrisey, Emma, 17 of \$10	\$170.00
Newton, Geo. P., Bal.	750.00
Palmer, W. J., 3 of \$2,000	6,000.00
Palmer, W. J., 3 of \$500	1,500.00
Payne, John C., Bal.	1,900.00
Richold, Leopold	4,000.00
Richold, Leopold	5,000.00
Robinson, Jesse, 12 of \$500	6,000.00
Stein, Robt., 43 of \$28	1,204.00
Thompson, Emma J.	10.00
Wardman, Harry, 3 notes of \$500	1,500.00
7 " " \$1,000	7,000.00
3 " " \$2,000	6,000.00
12 " " \$1,000	12,000.00
2 " " \$2,000	4,000.00

\$138,237.94

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Account of Notes Paid.

Aguila, Y.	500.00
Brown, Lee	26.06
Crowdy, Wm. S.	1,000.00
Groff, D. B., account instalment	900.00
Groff, D. B., Bal. of \$700	700.00
Holman, B. W., account of note	500.00
King, C. W., Jr.	1,000.00
King, C. W., Jr.	500.00
Morrissey, Emma, 15 of \$10	150.00
Newton, Geo. P.	1,500.00
Palmer, W. J., 4 of \$2,000	8,000.00
Palmer, W. J., 4 of \$500	2,000.00
Payne, John C., account note	100.00
Payne, John C., 7 of \$24	168.00
Payne, John C.	14.00
Richardson, R. C., Balance	3,500.00
Robinson, Jesse	500.00
Simmons, S. S., 18 of \$25	450.00
Stein, Robert, 14 of \$28	392.00
Wardman, H., 3 of \$1,000	3,000.00
West, Catharine	2,500.00

\$27,400.06

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Notes Purchased.

Aguila, Y., 3 of \$500.....	\$1,500.00
Brown, Lee, November 2, 1913.....	2,000.00
Brown, Lee, Instalment	1,400.00
Draper, W. A., August 6, 1911.....	2,000.00
Lowery, George C., February 26, 1910, 2 of \$1,000, 1 of \$500, 2 of \$500.....	2,500.00
Stein, Robert, 57 of \$28.....	1,596.00
Wardman, Harry, 12 of \$1,000.....	12,000.00
Wardman, Harry, 2 of \$2,000.....	4,000.00
	<hr/>
	\$26,996.00

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Report of Real Estate Included in the Trust.

Lot 26, square 71, No. 1112 N. H. Avenue.
 Lot 139, Square 235, No. 1306 "W" St., N. W.
 Lots 12, 13 and 14, Square 127, No. 1739 "H" Street.
 Lot "D", Square 211, 1424 R. I. Ave., N. W.
 Lot 22, Square 304, No. 2009 12th St., N. W.
 Lot 23, Square 304, 2011 12th St., N. W.
 Lot 146, Square 235, No. 2132 13th St., N. W.
 Lot 48, Square 240, 1332 "R" St., N. W.
 Lot 28, Block 13, Le Droit Park, No. 322 Spruce St.
 Lot 187, Mt. Pleasant, No. 3042 14th St., N. W.
 Lot 20, Square 72, No. 2112 M Street, N. W.
 Lot 33, Square 388, No. 917 Desmond Alley.
 Lot 119, Square 981, No. 814 12th St., N. E.
 Lot 14, Square 966, No. 1007 Mass. Ave., N. E.
 Lot 15, Square 28, Cor. 25th and "K" Sts., N. W. (unimproved).
 Lots 1, 6, 7, 8, 9, 16, 17 and 19 to 24, Block 6, "Edgewood" (unimproved).
 "Araby", near Frederick.
 Lot 140, Square 235, No. 1308 W St., N. W.
 Lot 50, Square 937, No. 419 9th St., N. E.

Property from which this Estate Receives Rentals or holds trust:

Lot 104, Square 623, No. 47 Defrees Street.
 Lots 1 to 7, Block 10, "Isherwood" (unimproved).

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*Account of Income.**Dr.*

To interest collected on promissory notes.....	\$14,193.33
" dividends on stocks.....	777.00
" rents collected.....	6,271.80
" rebate Ins. 421 9th St., N. E.....	1.10
	<hr/>
	\$21,243.23

Cr.

By paid taxes.....	\$2,959.94	
" paid water rents.....	204.73	
" cost of repairs.....	1,640.70	
" cost of insurance.....	263.66	
" paid commissions of collection of rents.....	442.64	
" paid Alex. R. Magruder.....	7,400.00	
" paid Isabel R. Magruder.....	7,116.66	
" paid A. F. Magruder, Guardian.....	233.34	
" new cash book.....	3.00	
" paid trustees, Notary and recording re- lease 421 9th St., N. E.....	3.95	
		<hr/> 20,268.62
Balance of income.....		\$974.61

190 *Account of Trustees of the Eliza C. Magruder Trust.*

Principal.

Dr.

To balance of cash in hand per last report.....	\$300.00
" amount paid on Ellen Curtin note.....	100.00
	<hr/> \$400.00

Cr.

Amount loaned income.....	191.17
Balance principal in hand.....	<hr/> \$208.83

Notes in Hand.

Ellen Curtin, Balance.....	\$400.00
C. C. Dawson.....	1,000.00
D. B. Groff.....	2,500.00
Harry Wardman	1,000.00

SAM'L A. DRURY.
SAM'L MADDOX.

191 *Account of Income.*

Dr.

To balance in hand per last report of Auditor.....	\$124.67
" collection of rents.....	1,525.49
" collections of interest.....	435.00
Borrowed from principal	191.17
	<hr/> \$2,276.33

Cr.

By paid taxes	\$268.58	
" cost of repairs	404.25	
" paid water rent	28.50	
" paid Eliza C. Magruder	1,575.00	
		<hr/>
		\$2,276.33

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AUDITOR'S EXHIBIT #3.

Report of the Trustees and Schedule to Accompany Their Sixth and Final Account Before the Auditor.

Filed March 16, 1910.

* * * * *

The will of Judge Richardson was admitted to probate in the probate court of Middlesex county, Massachusetts, on the 24th day of November, 1896, and letters testamentary issued to Samuel A. Drury and George F. Richardson—the latter a brother of the deceased—the executors named in the will. At the time of his death, and for many years prior thereto, Judge Richardson lived in Washington and owned no real estate in Massachusetts. His entire estate, real and personal, with immaterial exceptions, was in the District of Columbia. Mr. George F. Richardson qualified as executor but never took any active participation in the management of the estate. This was intrusted entirely to Mr. Drury who took into his care and custody everything in the way of interest-bearing securities belonging to the estate. The household furniture, silverware, pictures &c., were turned over to Dr. A. F. Magruder, father of the beneficiaries under the will, and allowed to remain in premises No. 1739 H street, the family home.

Mr. Drury opened the books of account on the 1st day of December, 1896. The account was kept with the trust fund, rather than with any particular agent or trustee, and has been so continuously kept by him down to the present time. Changes occurred daily—in fact, hourly—in the account, because of the payment of principal and interest of small notes, maturing monthly, secured by second trusts on real estate in which most of Judge Richardson's money was invested.

Mr. G. F. Richardson declined to qualify as trustee under his brother's will and Samuel Maddox was appointed in his place by the Supreme Court of the District of Columbia on the 1st day of April, 1899. On the 13th of April, 1899, an order was passed in the probate court at Cambridge directing the executors, Drury and Richardson, to turn over the funds and property of the estate to Drury and Maddox, trustees.

At that time there were pending in the Court at Cambridge against the executors two suits for personal taxes, aggregating about \$15,000, and for the years 1897 and 1898. The taxes there commenced with the 1st of May of each year, and Mr. Moody, who had charge of the

defence of these suits and feared they would go against the executors, strongly advised that the executors close their final accounts in Massachusetts before the 1st day of May, when the right to tax for another year would attach.

So urgent did this seem that Mr. F. N. Weir, a lawyer of Lowell and an associate of Mr. George F. Richardson, wired under date April 21 that he would be in Washington the following Sunday, the 23rd, and asking Mr. Drury to meet him that day at the Arlington Hotel.

Mr. Drury thereupon hastily prepared his account as executor, summarizing the property on hand estimated at \$415,458.37, and showing all moneys paid out on account of the trust.

Mr. Weir on that day (Sunday, the 23rd) made the summary, giving the items for which allowance of \$18,800 was asked. With this Mr. Drury had nothing to do except that he was told or given to understand that out of it he must pay counsel fees in the tax cases and counsel fees in Washington, but not the costs and expenses of those suits. The account as so made up was verified by Mr. Drury and Mr. George F. Richardson and presented by the latter, or Mr. Weir, to the probate court at Cambridge and on the 25th of April it was "decreed that the said account be allowed."

Except as hereinbefore indicated, Mr. Drury had nothing whatever to do with the allowance of \$18,800, nor did he suggest that amount for presentation to the court.

At that time the suits had been filed and Mr. Drury did not know what fees would be charged by Mr. Moody or his Washington counsel. But he was told that after the payment of those fees, whatever was left of the \$18,800 would be an allowance to the executors for services in connection with the estate.

The tax suits were tried in June following and, much to Mr. Moody's surprise, resulted in a verdict for the defendant, thus saving to the beneficiaries of the will the amount, namely, about \$15,000. The cases were appealed and the judgment affirmed. Mr. Moody had been paid a modest retainer of \$100 and he charged a fee of \$1,500 for taking the case through all the courts. A like sum was paid Mr. Maddox who prepared the cases for presentation in court.

Mr. George F. Richardson having done no work as executor declined to take any part of the allowance, but out of the \$18,800 Mr. Drury paid Mr. Weir \$1,000 for coming to Washington in the interest of Mr. G. F. Richardson to superintend the preparation of the account and for taking general charge of the case in the probate court at Cambridge.

When informed by Mr. Weir of the amount of the allowance, it was entered up by Mr. Drury as a credit on the cash book under date April 24, 1899. Properly with that entry the account of the executors should have been closed on Mr. Drury's books, but as the change of agents to handle the funds made not the slightest change in their ultimate disposition, Mr. Drury continued his cash account with the fund, crediting it as theretofore with all moneys received and charging against it all moneys expended.

For some months after their appointment the trustees devoted their attention to putting the trust estate in shape for presentation to our equity court, and in October, 1899, an order was passed referring the cause to the Auditor to state of what the estate consisted and the account of the trustees. Mr. Smith Thompson, Jr., then the principal account clerk in the office of our register of wills, was employed to prepare the schedules. The books were turned over to him and he spent some months over them. As he found the cash account continuous, he assumed that because the trustees

were appointed on the 1st day of April their accounts should
193 begin on that day. He therefore so began his schedule.

When he noticed the entry of \$18,800 as of date April 24, 1899, on Mr. Drury's cash items as "Expense a/c, S. A. Drury, allowance, lawyers' fees &c., \$18,800," he inserted the item in his schedule as follows, "Commissions allowed the executors under the will of said William A. Richardson by the probate court of the county of Middlesex, state of Massachusetts, and paid by these trustees because there was not sufficient cash on hand, April 1, 1899, to do so."

This memorandum, as we have seen, did not correctly interpret the item as prepared by Mr. Weir for presentation to the Massachusetts court. But Mr. Thompson had been accustomed to dealing with commissions in the preparation of accounts of executors in our probate court and probably did not know that executors are not allowed to receive compensation in the way of commissions in the courts of Massachusetts but only an allowance such as the court may deem proper to make in each case. And the trustees at the time were equally ignorant. They had by that time forgotten or overlooked the fact that as trustees they had not received any part of the estate prior to April 24, though it had theretofore been in Mr. Drury's keeping as executor.

But it made not the slightest difference to the beneficiaries at what date the account of the trustees started—the result must have been just the same on any given date.

As a matter of fact, however, as Mr. Drury's cash book
197 clearly shows, the \$18,800 allowance was taken out before the trustees came into possession of the property and properly their accounts should begin that day. But the only purpose of recasting the account would be to eliminate the items of income and expenditure from the 1st to the 24th day of April, 1899, inclusive. Of those items \$15,605 are notes paid and \$120 a note bought. This would cause also a change of the cash on hand at the beginning of their account, for, as we have pointed out, the cash was always changing every day, often many times a day, but the final balance of cash and securities on hand must have been identically the same at any subsequent period of accounting. It is, therefore, suggested that the first account of the Auditor be not reopened, as a recasting of the account would show identically the same figures and schedules of notes for the beginning of the second account.

But we have stated and herewith submit the trustees' first account

as it should have been prepared by Mr. Thompson and presented to the Auditor.

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SCHEDULE A.

Account of Samuel A. Drury and Samuel Maddox, Trustees.

Dr.

To Principal personal estate received from Executors, as follows:

Household furniture and effects appraised at.....	\$3,710.00
Carriages, harness, etc.....	750.00
34 shares of capital stock of the Northern Railroad Co.,	5,270.00
350 shares of capital stock of the Universal Car Coupler Co., value unknown.....	
5 shares of capital stock of the Lowell Manufacturing Co.	2,625.00
Promissory notes as per Schedule B (good).....	233,084.01
Promissory notes as per Schedule Bb (desperate)	\$26,907.96
Promissory notes as per Schedule Bbb (worthless)	\$21,876.82
Cash	7,286.60
	<hr/>
	\$252,725.61

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By Paid notes secured by deed of trust on real estate.....	\$7,500.00
Paid indebtedness secured by deeds of trust, per Schedule F.....	21,316.57
199 By Allowance to Samuel Maddox for services in suit of ejectment vs. Laura V. Stone et vir \$100, and for services as counsel in this proceeding \$250	350.00
Auditor's fees and costs for principal....	300.00
	<hr/>
	29,466.57
	<hr/>
	\$223,259.04

Balance of principal, April 30, 1900, as follows:

Household furniture and effects as originally appraised.....	\$3,710.00
Carriages, harness, etc., ditto	750.00
34 shares of capital stock, Northern Railroad Co., ditto.....	5,270.00
35 shares of the stock of Bigelow Carpet Co., ditto.....	2,625.00
Promissory notes, per Schedule E	195,408.60
Cash	15,495.44
	<hr/>
	\$223,259.04

Promissory notes, desperate, Schedule Bb	\$26,907.96
Promissory notes, worthless, Schedule Bbb	\$21,876.82
350 shares capital stock Universal Car Coupler Co., value unknown.....

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SCHEDULE A—(Continued).

Statement of Real Estate Included in the Trust.

Lot numbered 26 in square 71, No. 1112 New Hampshire avenue.
 Lot numbered 139 in square 235, No. 1303 M street, N. W.,
 Lots 12, 13 and 14 in square 127, No. 1739 H street, N. W.
 Lot lettered D in square 211, No. 1424 Rhode Island avenue.
 Lots 41 and 42 in square 107, No. 1824 and 1826 L street, N. W.
 Lot numbered 140 in square 235, No. 1308 W street, N. W.
 Lot numbered 2 in square 304, No. 2009 12th street, N. W.
 Lot numbered 23 in square 304, No. 2011 12th street, N. W.
 Lot numbered 146 in square 235, No. 2132 13th street, N. W.
 Lot numbered 48 in square 240, No. 1332 R street, N. W.
 Lots 6, 7 and 21 in square 550, Nos. 207 and 209 R street, N. W.
 Lot 15 in square 307, Vermont avenue and R street, N. W.
 Lots 1, 6, 7, 8, 9, 17 and 24, block 6, "Edgewood", unimproved.
 Lot 28 in block 13, Le Driot Park, No. 322 Spruce street.
 Lot 187, Mount Pleasant, No. 3042 10th street, N. W.
 Lot 20 in square 72, No. 2112 M street, N. W.
 Lot 33 in square 388, No. 917 Desmond alley, S. W.
 Lot 119 in square 981, No. 814 12th street, N. E.
 Lot 37 in square 812, No. 443 4th street, N. E.
 Lot 71 in square 887, No. 727 L street, N. E.
 Lot 14 in square 966, No. 1007 Mass. Avenue, N. E.
 Lot 51 in square 754, No. 520 3rd street, N. E.
 Lot 197 in square 855, No. 654 L street, N. E.
 Lot 25 in square 676, No. 20 H street, N. E.

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SCHEDULE A—(Continued).

Property From Which This Estate Receives the Rental.

Lot 33 in square 943, No. 917 North Carolina avenue, S. E.
 Lot 104 in square 623, No. 47 Defrees street.
 Lot 51 in square 937, No. 421 9th street, N. E.
 Lot 50 in square 937, No. 419 9th street, N. E.

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SCHEDULE Aa.

Note Account.

Received from Executors, Schedule B	\$233,084.01
Notes purchased, Schedule D	74,187.40
	<hr/>
	\$307,271.41
Notes paid, Schedule C	111,862.81
	<hr/>
Notes on hand, May 1, 1900, Schedule E.....	\$195,408.60

Cash Account.

Received from Executors	7,286.60	
Notes paid.....	111,862.81	
		\$119,149.41
Notes purchased.....	\$74,187.40	
Paid trust indebtedness.....	7,500.00	
Ditto, Schedule F	21,316.57	
For legal services.....	350.00	
Auditor's fees.....	300.00	
		103,653.97
Balance principal on hand.....		\$15,495.44

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SCHEDULE B.

Promissory Notes Received from Executors.

Albert, A. P.....	\$4,200 00
" " "	970 00
Arms, John T.....	1,385 35
Brown, Beatrice,	500 00
Barnett, Alonzo C.....	3,000 00
" " "	1,000 00
Berryman, W. O.....	1,200 00
Brewer, M. B.....	500 00
Barrie, George.....	2,500 00
Boswell, W. I.....	900 00
Bart, A. F.....	675 00
Brown, E. C.....	300 00
Baker, F. W.....	360 00
Bevans, W. K.....	290 00
Bart, C. M.....	2,000 00
Bailey, J. B.....	1,298.66
Bettes, E. C.....	1,000 00
Benson, E. C.....	720 00
Blodgett, E. E. S.....	2,200 00
Carroll, N. C.....	520 00
Crawford, J. J.....	120 00
Churchill, J. M.....	1,450 00
Crenshaw, R. P.....	1,850 00
Colsen, R. A.....	400 00
Collins, Wm. A.....	650 00
Chapman, Agnes.....	600 00
Dougherty, B. & P.....	1,000 00
Deitrich, R. D. & A.....	4,000 00

Dangerfield, Wm.	4,500 00
“ “	4,500 00
“ “	1,050 00
Danenhower, W.	1,400 00
Dorsey, O.	1,400 00
Dent, A. B.	210 00
Dunn, Kate A.	30 00
Eggerstedt, M. E.	2,500 00
Ebenezer Colored Church	3,400 00
Fitzhugh, James S.	520 00
Freeman, Jno. F.	40 00
Geier, J. J.	300 00
Graves, B. B. F.	125 00
Grupe, Albert.	12,000 00
Groff, D. B. 5 of \$2,500.	12,500 00
“ “ “ 4 of \$2,000.	8,000 00
“ “ “ 2 of \$1,000.	2,000 00
“ “ “	11,150 00
“ “ “	5,440 00
204 Hutchins, J. G.	25 00
“ “ “	500 00
“ “ “	575 00
Holland, M. N.	1,000 00
Hubbard, V. A. 6 of \$1,750.	10,500 00
Hughston, A. W. & J. L.	1,800 00
Heron, George W.	125 00
Henderson, Delia.	300 00
Holt, R. O.	2,000 00
Henry, M. R.	2,140 00
Holman, B. W.	4,000 00
“ “ “	3,750 00
Higgins, Walter.	1,000 00
Jones, W. W.	200 00
Jordan, H. C.	350 00
Jenkins, Ida V.	125 00
Kenealy, J. T. & M. E.	300 00
Krohr, Jno. G.	1,500 00
“ “ “	400 00
King, J. J.	980 00
Klipstein, G. T.	350 00
Kelly, W. F.	75 00
Lockhart, A. J. & M. M.	320 00
Lively, C. H.	200 00
Lovett, Antoine, De B.	2,600 00
Long, A. N.	400 00
Lockhart, S. R. & A. W.	850 00

Morisey, Emma.....	252 00
“ “	1,000 00
McQueen, H. L.....	550 00
McCary, D. B.....	500 00
Musser, Wm.....	675 00
McLeran, J. E.....	3,500 00
Merwin, C. J.....	1,025 00
Mangum, R. C.....	1,200 00
Morrison, R. A.....	800 00
“ “ “	480 00
McIntosh, John T.....	1,500 00
Melton, R. O.....	100 00
McKinlay, W.....	3,600 00
Nash, M. O.....	1,100 00
Newton, G. P. 6 of \$1,500.....	9,000 00
“ “ “	800 00
Newcomb, H. M.....	25 00
Newman, Isaac.....	200 00
N. C. Avenue Baptist Church	15,000 00
Patee, E. S. G.....	205 00
Pulaski, George T.....	1,300 00
“ “ “	1,275 00
Peterson, Carl.....	120 00
“ Paxton, Wm. C.....	1,200 00
205 “ Pride, A. T.....	150 00
“ Pickford, Chas. R.....	2,000 00
Purman, J. J.....	75 00
Phillips, A. K.....	3,000 00
“ “ “	785 00
Reavis, Albert F.....	880 00
Rosecrans, J. E.....	3,750 00
Raedy, D. J.....	400 00
Ravenberg, M. Grace.....	1,610 00
Second Colored Baptist Church.....	2,750 00
Stewart, Jno. F.....	525 00
Schultz, Frederick.....	375 00
Stone, Chas. P.....	1,175 00
Scott, Joseph A.....	575 00
Smith, Nancy E.....	650 00
Steinle, Frederick.....	1,900 00
Strayer, M. M.....	500 00
“ “ “	350 00
Schneider, Jane J.....	1,120 00
Scott, Robert E.....	210 00
Squires, Mary E.....	350 00
Szegedy, H. W.....	100 00
Smith, Wm. M.....	150 00
Stevens, R. W.....	180 00
Simpson, Chas. W.....	11,000 00

Thomas, E. M.....	510 00
Thompson, Emma J.....	25 00
Twoomey, Daniel.....	3,300 00
Thomas, A. A.....	800 00
Taylor, Fannie E.....	900 00
Taylor, Sarah A.....	225 00
Viele, H. K.....	68 00
Wall, Amanda A.....	1,400 00
Watts, Charles D.....	525 00
White, W. P.....	75 00
Weed, L. W.....	1,700 00
Young, John.....	150 00
Young, A. H.....	320 00
	<hr/>
	\$233,084 01

SCHEDULE Bb.

List of Desperate Notes.

Bolton, J. H.....	205 00
Boswell, W. J.....	1,650 00
“ “ “.....	640 00
Clinkins, W. H.....	215 00
Colt, W. D.....	500 00
Carter, Blanche.....	540 00
Danenhower, “.....	2,100 00
Fox, Thomas C.....	180 00
Forrester, E. C.....	800 00
“ “ “.....	1,000 00
Goldstein, Jos. A.....	1,000 00
Gillis, A. H.....	380 00
Gilbert, H. P.....	190 00
Justice, L. C.....	200 00
Lewis, Solomon.....	790 00
Lewis, John E.....	2,500 00
Moore, H. P. McC.....	275 00
Meriwether, J. H.....	2,000 00
Morrison, R. A.....	325 00
Moffatt, S. S.....	2,800 00
Notzel, Jesse.....	500 00

SAMUEL A. DRURY ET AL.

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O'Hare, L. & E. J.....	120 00
Raub, Anna M.....	550 00
Selman, J. W.....	60 00
Smith, James H.....	750 00
Welch, H. S.....	3,429 68
" " ".....	2,233 28
Worthington, J. Y.....	590 00
Wilson, Edward.....	385 00
	<hr/>
	\$26,907.96

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SCHEDULE Bbb.

Notes and Claims in Inventory, Which Were not Accepted by the Trustees.

Chittenden, G. B.....	1,570 00
" " ".....	1,000 00
" " ".....	360 00
Cooke & Chapin.....	200 00
Cooke, H. D.....	1,500 00
Clarke, T. H.....	1,000 00
Cooke, H. D. & Anna.....	2,300 00
Inch, Phillip.....	260 00
Morrissett, H.....	15 00
Pratt & Sons.....	2,160 00
Spalding, H.....	3,000 00
Sander, J. N.....	575 00
Sanger, R.....	2,836 82
Stickney, G. W.....	4,800 00
Claim vs. Desmond alley.....	300 00
	<hr/>
	\$21,876.82

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SCHEDULE C.

Promissory Notes Paid.

Albert, A. P.....	4,170 00
Arms, John T.....	815 75
Brown, E. C.....	300
Bart, A. F.....	300 00
Barnett, A. C.....	250 00
Baker, F. W.....	360 00
Bevans, W. H.....	290 00
Bart, C. M.....	2,000 00
Bailey, J. B.....	1,298 66
Bettes, E. C.....	1,000 00

Belt, Laura V.....	750 00
Benson, E. C.....	720 00
Boyd, W. A. & F. A.....	526 37
Blodgett, E. E. C.....	2,200 00
Callis, Wm. A.....	650 00
Carroll, M. C.....	240 00
Churchill, J. M.....	300 00
Crenshaw, R. P.....	316 53
Crawford, J. J.....	570 00
Chapman, Agnes	600 00
Dougherty, B. & P.....	1,000 00
Dent, A. B.....	210 00
Dunn, Kate A.....	30 00
Dangerfield, W. B.....	1,050 00
Drury, Ida F.....	1,000 00
Dulaney, C. S.....	8 50
Eggerstedt, Mary C.....	2,500 00
Ebenezer Church	1,300 00
Fitzhugh, J. S.....	200 00
Freeman, John S.....	40 00
Geier, J. J.....	250 00
Graff, Diller B.....	1,200 00
" " " 2 of \$2,500.....	5,000 00
Graves, B. B. F.....	125 00
Grupe, Albert.....	12,000 00
Heron, George W.....	125 00
Henderson, Della A.....	300 00
Hackett, Mary A.....	40 00
Hutchins, J. G.....	50 00
Holt, Robert O.....	2,000 00
Henry, Mary R.....	2,140 00
Holland, M. M.....	1,000 00
Jones, W. W.....	200 00
Jordan, H. C.....	350 00
209 Jenkins, Ida V.....	125 00
Klipstein, G. T.....	350 00
King, J. J.....	980 00
Krohr, John G.....	400 00
Kelly, Wm. F.....	75 00
Lockhart, A. J.....	120 00
Lockhart, G. R. & A. W.....	850 00
Long, A. N.....	400 00
Lively, C. H.....	130 00

McQueen, H. L.....	175 00
Milton, R. O.....	100 00
Musser, Wm.....	195 00
Merwin, C. S.....	900 00
Morrissey, E. S.....	234 00
McCary, D. B.....	500 00
McKinlay, W.....	3,800 00
Morrison, R. A.....	180 00
Newman, Isaac.....	200 00
N. C. Avenue Baptist Church.....	1,500 00
Newcomb, H. M.....	25 00
Newton, George P.....	500 00
Pulaski, G. T.....	25 00
Patee, E. S. G.....	130 00
Paxton, Wm. C.....	1,200 00
Pride, A. T.....	150 00
Purman, J. J.....	75 00
Petersen, Carl.....	60 00
Phillips, A. K.....	3,000 00
“ “ “.....	785 00
Pickford, Chas. R.....	2,000 00
Reavis, A. S.....	400 00
Raedy, D. J.....	400 00
Rushinberger, M.....	2,400 00
Ravenburg, M. Grace.....	1,610.00
Second Colored Baptist Church.....	1,000 00
Schultz, Frederick.....	250 00
Scott, R. E.....	210 00
Squires, Mary E.....	350 00
Strayer, M. M.....	600 00
Szegedy, H. W.....	100 00
Schneider, J. J.....	1,120 00
Smith, Wm. M.....	150 00
Stevens, R. W.....	180 00
Scott, Jos. A.....	75 00
Simpson, Chas. W.....	11,000 00
Stewart, J. F.....	140 00
Stone, Chas. P.....	1,175.00
“ “ “.....	150 00
Springer, W. P., 3 of \$50.....	150 00
210 Taylor, Fannie E.....	900 00
“ Taylor, Sarah A.....	225 00
Thomas, Eliza M.....	360 00
Thomas, A. A.....	550 00
Twomey, Daniel.....	3,300 00
Thompson, Emma J.....	15 00

Veile, H. K.	68 00
White, W. P.	75 00
Watts, C. D.	300 00
Weed, L. Walter	1,700
Young, Alice H.	50 00
" " "	300 00
Young, John	120 00
	<hr/>
	\$111,862.81

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SCHEDULE D.

Promissory Notes Purchased.

Belt, L. V. & A. G.	750 00
Boyd, W. A. & F.	526 37
Crawford, J. J.	110 00
" " "	100 00
" " "	90 00
" " "	80 00
" " "	70 00
" " "	60 00
Crenshaw, A. P.	66 53
Drury, Ida F.	1,000 00
Dulaney, C. O. 2 of \$8.50 each.	17 00
Groff, D. B.	2,000 00
Hackett, M. A.	108 50
King, C. W. 2 of \$15,000 each.	30,000 00
" " " 3 of \$2,500 each.	7,500 00
Palmer, W. J. 8 of \$2,000 each.	16,000 00
" " " 8 of \$1,000 "	8,000 00
" " " 8 of \$300 "	2,400 00
Rushenberger, Mary.	2,400 00
Stone, Charles P.	1,175 00
Springer, W. P. 3 of \$478 each.	1,434 00
Young, Alice H.	300 00
	<hr/>
	\$74,187.40

SCHEDULE E.

Promissory Notes in Hand.

Albert, A. P.....	\$1,000 00
Arms, John Taylor.....	569 60
Brown, Beatrice.....	500 00
Barnett, Alonzo C.....	3,000 00
“ “ “.....	750 00
Berriman, William O.....	1,200 00
Brewer, Margaret B.....	500 00
Barrie, Geo.....	2,500 00
Boswell, W. I.....	900 00
Bart, Ambrose F.....	375 00
Carroll, Margaret C.....	280 00
Crawford, J. J.....	60 00
Churchill, J. M.....	1,150 00
Crenshaw, R. P.....	1,600 00
Colsen, R. A.....	400 00
Deitrich, Rose D. and A.....	4,000 00
Daingerfield, William B., 2 of \$4,500.....	9,000 00
Danenhower, W.....	1,400 00
Dorsey, Osborne.....	1,400 00
Dulaney, C. S.....	8 50
Ebenezer Colored Church.....	2,100 00
Fitzhugh, James C.....	320 00
Geier, J. J.....
Groff, D. B., 3 of \$2,500 each.....	7,500 00
“ “ “ 5 “ \$2,000 “.....	10,000 00
“ “ “ 2 “ \$1,000 “.....	2,000 00
“ “ “.....	9,950 00
“ “ “.....	5,440 00
Higgins, Walter.....	1,000 00
Hubbard, Vincent A., 6 of \$1,700.....	10,500 00
Hughston, A. W. and J. L.....	1,800 00
Hutchins, J. G.....	500 00
“ “ “.....	525 00
“ “ “.....	25 00
Hackett, Mary A.....	68 50
Holman, B. W.....	4,000 00
“ “ “.....	3,750 00
Knealy, J. T. and M. C.....	300 00
Krohr, John G.....	1,500 00
King, Chas. W., 2 of \$15,000 each.....	30,000 00
“ “ “ 3 of \$2,500 “.....	7,500 00

Lockhart, A. J.	200 00
Lively, Chas. H.	70 00
Lovett, Antoine De B.	2,500 00
Morresey, Emma.	1,018 00
McQueen, H. L.	375 00
Musser, William.	480 00
McLeran, John E.	3,500 00
Merwin, C. S.	125 00
Mangum, R. C.	1,200 00
Morrison, Rufus A.	800 00
" " "	300 00
McIntosh, John T.	1,500 00
Nash, Martha O.	1,100 00
Newton, Geo. P., 6 of \$1,500 each.	9,000 00
" " "	300 00
Patee, E. E. G.	75 00
Palmer, William J., 8 of \$2,000 each.	16,000 00
" " " " " \$1,000 "	8,000 00
" " " " " \$300 "	2,400 00
Pulaski, C. T., 2 of \$1,275	2,550 00
Peterson, Carl.	60 00
Reavis, Albert F.	480 00
Rosecrans, J. E. & I. A.	3,750 00
Second Colored Baptist Church.	1,750 00
Stewart, John F.	385 00
Schultz, Frederick.	125 00
Stone, Chas. P.	1,025 00
Scott, Joseph A.	500 00
Smith, N. E.	650 00
Steinle, Frederick.	1,000 00
Strayer, Minnie M.	250 00
Springer, W. P., 3 of \$428 each.	1,284 00
Thomas, Eliza M.	150 00
Thompson, Emma J.	10 00
Thomas, A. A.	250 00
Wall, Amanda A.	1,400 00
Watts, Chas. D.	225 00
Young, A. H.	270 00
" John	30 00

 \$195,408.60

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SCHEDULE F.

Account of Loans on Real Estate Paid by Trustees.

Property 1102 New Hampshire ave.....	\$951 66
2112 M st.....	719 91
1306 W St.....	600 00
1424 Rhode Island ave.....	570 00
1824-1826 L st.....	468 00
1308 W st.....	1,820 00
2009 and 2011-12th st.....	4,340 00
1007 Mass. ave., N. E.....	3,180 00
2132 13th st.....	252 00
322 Spruce st.....	3,785 00
20 H st., N. E.....	240 00
207 and 209 R st.....	390 00
3042 14th st.....	4,000 00
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	\$21,316.57

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SCHEDULE G.

Account of Income.

Dr.

To Interest on promissory notes.....	\$12,930 55
Dividends	279 00
From H. D. Cooke account.....	288 44
Rents of real estate.....	5,688 33
Protest fees collected.....	10 50
	<hr/>
	\$19,196.82

Cr.

By Interest paid.....	\$58 34
Paid account H. D. Cooke.....	837 77
Travelling expenses.....	100 00
Expense preparing "Life" of testator...	40 00
Office and miscellaneous expenses.....	179 96
Taxes, insurance and repairs.....	4,709 87
Trustees' commissions.....	2,074 16
Auditor's fees.....	50 00
Payments to A. F. Magruder, guard- ian	9,100 00
	<hr/>
	17,150 10
	<hr/>
	\$2,046.72
Cash in hand.....	1,991 01
Due from Eliza C. Magruder trust.....	70 83
	<hr/>
	\$2,046.72

SCHEDULE H.

Account of Eliza C. Magruder Trust.

Dr.

To Collection of note of Chas. H. Ruth.....	\$3,000	00
“ “ “ “ “ “ “ “	2,300	00
	<hr/>	
	\$5,300	00

Invested in—

Note of Ellen Curtin.....	\$2,000 00	
" " Daniel Twomey.....	3,300 00	
	<hr/>	5,300 00

Dr.

To Rents collected.....	\$824 48
“ Interest “	333 90
	<hr/>
“ Am't cash on hand.....	\$1,158 38
	124 32
	<hr/>
	\$1,282 70

Dr.

Taxes paid.....	\$245 13	
Water rents paid.....	13 08	
Paid accrued interest on note purchased.....	86 35	
Paid for repairs.....	36 03	
Paid Eliza C. Magruder.....	972 94	
Borrowed from main trust.....		70 83
Due main trust.....	\$70 83	

217 By this method of accounting the balances of cash are as follows:

On account of principal.....	\$15,495.44
" " " income	1,991.01
Total	<u>\$17,486.45</u>

In the Auditor's second account the items of cash carried forward from the first report are different, but the total is the same, as appears by the following figures:

Principal cash	\$14,178.87
Income " "	3,307.60
Total	<u>\$17,486.47</u>

The error of 2¢ occurred in the first statement of the E. C. Magruder trust account.

Inasmuch as the first order of reference in this cause called for a statement of the account of the executors, we subjoin hereto a copy of that account as presented to and passed by the probate court at Cambridge, Massachusetts, on the 24th day of April, 1899.

(89.)

218

(R. L., c. 150, #2.)

(Rule IX. "No executor or administrator shall receive any compensation by way of a commission upon the estate by him administered but shall be allowed his reasonable expenses incurred in the execution of his trust, and such compensation for his services as the Court in each case may deem just and reasonable. The account shall contain an itemized statement of the expenses incurred, and shall be accompanied by a statement of the nature of the services rendered and of such other matters as may be necessary to enable the Court to determine what compensation is reasonable.")

The first and final account of George F. Richardson and Samuel A. Drury, executors of the last will and testament of William A. Richardson, alleged in the petition for the probate of will and appointment of executors to have been late of Cambridge in the county of Middlesex, deceased.

This account is for the period beginning with the twenty-fourth day of November, 1896, and ending with the twenty-fourth day of April, 1899.

Said accountants charge themselves with the several amounts received, as stated in Schedule A, herewith exhibited	\$415,458.37
and ask to be allowed for sundry payments and charges as stated in Schedule B, herewith exhibited .	415,458.37
Balance as stated in Schedule C, herewith exhibited .	\$000,000.00

GEORGE F. RICHARDSON,
SAMUEL A. DRURY,

Executors.

219 The undersigned, being all persons interested (Isabel R. Magruder the daughter of the said William A. Richardson having died in April, 1898), having examined the foregoing account, request that the same may be allowed without further notice.

ALEXANDER R. MAGRUDER,
ISABEL R. MAGRUDER,

By Their Guardian, ALEXANDER F. MAGRUDER,
SAM'L MADDOX, *Trustee*,
SAM'L A. DRURY, *Trustee*.

COMMONWEALTH OF MASSACHUSETTS,

Middlesex, ss:

At a Probate Court Held at Cambridge in said County, on the 25th Day of April, A. D. 1899.

The foregoing account having been presented for allowance, and verified by the oath of the accountant, and all persons interested having consented thereto in writing, and no objections being made thereto, and the same having been examined and considered by the Court:

It is *decreed* that said account be allowed.

CHAS. J. McINTIRE,
Judge of Probate Court.

220

SCHEDULE A.

Amount of personal property, according to inventory or balance of next prior account.....	\$328,124.57
Amounts received from income, gain on sale of personal property over appraised value, and from other property, as follows:	
Amount of overdraft collected from Ida C. Magruder.	576.72
Discount on notes	1,200.25
Interest on notes.....	37,593.77
Dividends on stocks.....	1,005.00
Receipts from real estate.....	7,218.96
Amount collected a/c H. D. Cooke matters.....	1,000.00
Amount of personal — inventoried as doubtful	5,995.00
Amount of personal property inventoried as of "No Value"	32,619.78
Net credit to Ida C. Magruder Trust Estate.....	124.32

\$415,458.37

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SCHEDULE B.

Showing Payments, Charges, Losses, and Distributions.

Cost attending probate of will.....	311.75
Funeral expenses of Judge Richardson.....	325.50
Bills contracted by Judge Richardson.....	440.02
Medical attendance for Judge Richardson	70.00
Funeral expenses of Isabel R. Magruder.....	327.00
Amount paid Isabel R. Magruder.....	17,400.00
Amount paid to A. F. Magruder, Guardian.....	8,200.00
Maintenance of children, tuition, etc.....	303.21
Attorneys' fees	121.00
Printing and distributing "Life of Wm. A. Richardson"	1,222.45
Insurance on furniture.....	24.00
Expended on real estate in repairs, taxes, prior mortgages, etc.....	49,705.31

Amount paid for various trust estates held by Judge Richardson	16,731.64
Net amount paid out on H. D. Cooke matters.....	318.57
Protest fees	19.30
Postage	95.00
Stationery	11.91

95,626.66

Expense of administration including care of property, the payment of debts, the making of final account, the collection of notes amounting to \$226,607.54, the investment in trust notes of \$166,958.21, the collection from interest and other sources, of \$58,168.94, the payment of about \$50,000 for repairs on real estate, the taking up of prior mortgages, taxes, etc., including also the payment of moneys to Isabel Magruder and to Alexander F. Magruder, the guardian of their minor children, counsel fees incurred in the defense of suits for taxes in Massachusetts and for counsel fees in Washington, etc.....	95,626.66
	18,800.00

114,426.66

The following money and property have been paid, delivered and transferred to Samuel Maddox and Samuel A. Drury, trustees, appointed by the Supreme Court of the District of Columbia:

Cash	7,332.31
Household furniture	3,710.00
Carriages, etc.	725.00
Stocks	7,895.00
Unused portion of burial lot.....	230.00
Claim against the United States.....	1,000.00
Claim against Desmond Alley property.....	300.00
Notes secured and unsecured.....	279,839.40

\$415,458.37

We, Samuel Maddox and Samuel A. Drury, trustees under the will of William A. Richardson, by appointment of the Supreme Court of the District of Columbia, hereby acknowledge that as said trustees we have received the property set forth in the last eight items of the foregoing account.

SAMUEL MADDOX,
SAMUEL A. DRURY.

223 MIDDLESEX, ss:

APRIL 24, A. D. 1839.

Then appeared the within-named George F. Richardson and made oath that the within account is just and true.

Before me—

GEORGE R. RICHARDSON,
Justice of the Peace.

DISTRICT OF COLUMBIA, ss:

APRIL 24, A. D. 1899.

Then appeared the within-named Samuel A. Drury and made oath that the within account is just and true.

Before me—

ALFRED B. DENT,
Notary Public. [NOTARIAL SEAL.]

As shown in this account the notes secured and unsecured for which the executors were accountable aggregated	\$279,839.40
Deduct notes considered desperate and not accepted by the trustees.....	\$21,876.82
Deduct notes charged off as desperate in the first report of the Auditor....	26,907.96
	<hr/> 48,784.76
Aggregate of notes for which the trustees were liable as per the Massachusetts account and subsequent eliminations	\$231,054.62
224 Notes embraced in the first report of the Auditor, Schedule B, as being on hand April 1, 1899	\$248,569.01
Notes purchased between April 1 and April 24, 1899.	120.00
Notes, total	<hr/> 248,689.01
Notes paid between April 1, 1899, and April 24.....	15,605.01
Notes for which the trustees were accountable (as of date April 24, 1899).....	<hr/> \$233,084.01

In Schedule B of the Trustee's first report the total of notes received from the Executors should have been \$233,084.01, as shown above. In this aggregate are included 51 notes of a man named Pulaski, at a valuation of \$2590. (Auditor's first report.) In the inventory returned to the Massachusetts court, Schedule C, as "notes payable secured by second trust on real estate in Washington, D. C.", the executors returned 28 notes of Pulaski for \$15 each, and one note for \$20, aggregating \$440. Of these, \$400 were paid prior to April 24, 1899, and the remaining \$40 subsequently. These notes were appraised as being worth their face, \$440.

In the same inventory, Schedule F, the Executors returned two batches of Pulaski notes containing 51 notes each, and each note for \$50, the face value aggregating \$2550. But these notes were appraised in the inventory as being worth only \$1200, and as such entered into the aggregate of Schedule F, totaling \$9750.

225 In other words, they were entered in the Auditor's account as being \$1350 more than as given in the inventory returned to the Massachusetts court. The difference, \$1350, should therefore properly be deducted from the aggregate of notes for

which the Auditor finds the Trustees accountable, and there remains \$231,734.01.

As shown above the aggregate of notes received from the Executors, after first deducting desperate notes, is \$231,054.62.

The Trustees thus account for \$679.25 more in notes than they are charged with having received from the Executors. This is no doubt due to errors of omission made either when the inventory was prepared, or the account of the Executors for final presentation to the Probate Court at Cambridge.

The same result, of course, is reached by stating the account of the Executors according to the inventory returned to the Probate Court at Cambridge by the Executors on the 16th day of February, 1897, and changes occurring in the account between that date and April 24, 1899.

The notes embraced in the inventory returned to the Massachusetts Court are as follows:

Schedule B	\$216,755.05
“ C	76,961.00
“ F	9,750.00
“ D	5,995.00
“ E	32,619.78
Note of John S. Boutwell	900.00
“ “ Cook & Fletcher	2,000.00
“ “ Gregory	155.00
	<hr/>
	\$345,135.83
226 Difference between notes paid and notes purchased between December 1, 1896, and February 17, 1897, the date of the inventory	\$13,501.69
Notes purchased between the date of the inventory and April 24, 1899	166,958.21
	<hr/>
Total of all notes	\$525,595.73
Add for note of C. A. Johnson put down in Massachusetts Schedule C as \$100, whereas it should have been \$1,000	900.00
	<hr/>
	\$526,495.73
Deduct notes paid between February 16, 1897, and April 24, 1899	239,312.54
	<hr/>
	287,183.19
Deduct note of Hines & Ruth, which belonged to the E. C. Magruder trust.	\$5,500
Deduct one note of V. A. Hubbard for.	1,750
	<hr/>
	7,250.00
	<hr/>
	\$279,933.19

There were but six of these Hubbard notes for \$1,750 each, but the appraisers returned seven such notes.

In making up the account for final presentation to the Probate Court at Cambridge, the aggregate given is \$279,839.40, or a difference of less than \$100, which was perhaps an error of addition. At any rate it would be a matter of almost infinite trouble to now discover how the error occurred.

227 In order to present in succinct form the character of the work devolved on the trustees, in the performance of the trust committed to them, we subjoin hereto a statement showing their dealings and transactions with the real estate which came into their custody as part of the trust estate and also a statement showing the transactions of the trustees from the beginning of their trusteeship, down to April 20, 1907, the date of the Auditor's last report, in respect of the collections of principal and interest and reinvestment of the principal in notes secured by first trusts on District real estate, in the payment of incumbrances on real estate belonging to the trust estate, and in the purchase of "Araby" as a summer home for the beneficiaries of Judge Richardson's will.

The Real Estate.

While this statement is entirely inadequate to show the amount of care, labor, responsibility and annoyance involved in the matters referred to, owing to the peculiar character of the estate, it at least indicates that the duties of the trustees have been onerous and exacting.

Lot 119, Square 981, No. 814-12th Street N. W.

At the time of the testator's death he held a series of second trust notes secured on this property and payable monthly. It was also subject to a first deed of trust securing the sum of \$2500.00. The owners failed to pay the notes and the executors acquired the property by foreclosure in January, 1897. They then held of the second trust notes \$740.00, and the first trust and interest amounted to \$2750.00 which was paid off, making the property cost

228 the estate as follows:

Second trust notes charged up.....	\$740.00
First trust and interest.....	2750.00
Expenses of sale, etc.....	48.60
	<hr/>
	\$3538.60

The trustees have collected the rents and paid taxes, repairs, insurance etc., during the entire period of their trusteeship. The trust estate still owns the property and it rents for \$19.50 per month.

Lot 37, Square 812, 443 4th Street N. E.

At the death of the testator his estate held a series of second trust notes secured on this property and payable monthly.

The owners failed to pay the notes and the second trust was foreclosed. The executors acquired the property February 5, 1897 at which time they held, of said second trust notes, which were made by Mary A. Hackett, 21 of \$25.00 each, and the property was subject to a first trust which, with interest, amounted to \$2350.00, making the total charges against it as follows:

First trust and interest.....	\$2350.00
Second trust and interest.....	637.00
	<hr/>
	\$2987.00

The property was sold in June 1905, for \$3250.00, the purchaser defaulted and the purchase money trust was foreclosed August 6, 1908. The estate now holds a note for \$2,000.00, secured by first trust on this property. From 1899 to 1905, the trustees looked after rent, taxes, repairs etc.

Lots 12, 13, 14 in Square 127, No. 1739 H Street N. E.

This property was the residence of the testator and came to the trustees subject to a deed of trust securing \$15,000.00 which they have paid. They have looked after the property and paid taxes, repairs and insurance, during the entire period of their trust.

Lot 26 in Square 71, No. 1112 New Hampshire Avenue N. W.

At the death of the testator he held a series of second trust notes secured on this property, and payable monthly.

The owner ceased paying the notes and the executors took possession of the property and collected rents from April, 1897, at which time the estate held 17 of said notes, for \$50.00 each. The property was also subject to a first trust, securing \$5,000.

The trustees acquired title by deed under foreclosure proceedings, January 12, 1900, paid off the first trust and charged against the property \$850.00 of second trust notes.

The property still belongs to the trust estate and rents for \$28.50 per month. The trustees have paid taxes, repairs, insurance etc. and collected rents.

Lot 139, Square 235, 1306 W Street N. W.

At the time of the testator's death he held a series of second trust notes secured on this property. The owner ceased paying and the

executors foreclosed in May 1897, at which time they held \$600.00 of such notes. The property was subject to a first deed of trust securing \$4,000.00 which was paid by the trustees. This property is still a part of the trust estate and rents for \$30.50 per month. The trustees have paid taxes, repairs, insurance etc., and collected rents during the entire period of their trust.

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Lot 140, Square 235, 1308 W Street N. W.

At the death of the testator he held 46 notes of M. Grace Ravensburg, for \$35.00 each, secured by second deed of trust on this property. The property was subject to a first trust securing \$3500.00. The owner ceased paying and the executors foreclosed under the second trust. The trustees paid the first April 15, 1901, and the second trust notes, \$1610.00 were charged against the property. The trustees have paid taxes, repairs, insurance etc., during the entire period of their trust and collected rents. The property is still a part of the trust estate and rents for \$30.00 per month.

Lot D, Square 211, 1424 Rhode Island Avenue N. W.

At the death of the testator he held 8 notes of \$40.00 and one of \$1910.00, total \$2230.00, made by Emily V. D. Miller and secured by second trust on this property. The owner ceased paying and the executors foreclosed in October, 1897. The property was subject to a first trust securing \$10,000.00, which was paid by the trustees. The trustees have paid repairs, taxes, insurance etc., and collected rents during the entire period of their trusteeship. The property is still a part of the trust estate and rents for \$50.00 per month.

Lots 41 and 42, Square 107, 1824-26 L Street N. W.

At the testator's death he held 21 notes of Patrick Brennan, for \$25.00 each, secured by deed of trust on this property. The property was also subject to a prior deed of trust securing \$7800.00.

The executors foreclosed under the second trust, in January 1897 and the trustees paid the first trust after they took charge. The trustees collected rents, and paid taxes, repairs insurance etc., from the beginning of their trusteeship, down to 1902, when the property was sold for \$9,250.00.

Lot 22, Square 304, No. 2009 12th Street N. W.

At the testator's death he held notes of Mary R. Henry, 53 for \$40.00 each and one for \$20.00, secured by second trust on this property, which was also subject to first trust securing \$4,000.00. The executors foreclosed under second trust and had control of the property from November, 1897. They paid the first trust debt in October, 1898.

The trustees have paid taxes, repairs, insurance etc. and collected rents during the entire period of their trusteeship.

The property is still a part of the trust estate and rents for \$30.00 per month.

Lot 23, Square 304, No. 2011 12th Street N. W.

At the testator's death he held notes of E. E. S. Blodgett, 44 of \$50.00 each secured by second deed of trust on this property, which was also subject to a first trust securing \$4,000.00. The executors foreclosed under the second trust and had control of the property from November, 1897. They paid the first trust debt in October, 1898.

The trustees have paid taxes, repairs, and insurance, etc. and collected rents during the entire period of their trusteeship. The property is still a part of the trust estate and rents for \$30.00 per month.

Lot 146, Square 235, No. 2132 13th Street N. W.

At the testator's death he held a series of second trust notes of M. C. Gaddess, secured on this property. The owner ceased paying and the executors foreclosed under second trust, having charge of the property from February 1898, and charging against it 33 of said notes of \$40.00 each. The property was also subject to a first trust securing \$4200.00, which was paid by the trustees in June 1900.

The trustees paid taxes, repairs, insurance etc. and collected rents during the entire period of their trusteeship.

The property is still owned by the trust estate and rents for \$30.00 per month.

Lot 48, Square 240, 1332 R Street N. W.

At the testator's death he held a series of notes secured by second deed of trust on this property, and it was subject to a first trust securing \$6500.00. In October 1898, 18 of the second trust notes for \$25.00 each were unpaid and the owner had ceased paying. The executors foreclosed under the second trust and paid the first trust debt in January 1899.

The trustees have paid taxes, repairs, insurance, etc. and collected rents during the entire period of their trusteeship.

The property is still owned by the trust estate and rents for \$45.50 per month.

233 Lot 15, Square 307, Vermont Avenue & R Street N. W.

At the testator's death he held a first trust note of Laura V. Stone for \$5500.00, secured on this property. The owner made default and the executors foreclosed, securing control of the property from December, 1898.

The trustees paid taxes, repairs and insurance and collected rents from the beginning of their trusteeship to May 19, 1906, when the property was sold for \$7,000.00.

Lot 28, Block 13, Le Droit Park, 322 Spruce Street.

At the testator's death he held a series of notes secured by second deed of trust on this property and it was subject to a first deed of trust securing \$3,000.00. In March, 1898, 26 of the second trust notes for \$35.00 each, total \$785.00 were unpaid and the owner had ceased to pay. The executors secured a deed from the owner without foreclosure and had control of the property from March 1898. The trustees paid the first trust and charged off the second trust notes against the property, in January 1900, and have paid taxes, repairs, insurance etc., and collected rent during the entire period of their trusteeship.

The property is still owned by the trust estate and rents for \$20.50 per month.

Lot 187, Mount Pleasant, No. 3042 14th Street N. W.

At the time of the testator's death he held a series of second trust notes secured on this property. In January 1899, 74 of these notes of \$50.00 each were unpaid and the owner had ceased to pay. The property was also subject to a first deed of trust securing \$4,000.00. The executors secured a deed from the owner, without foreclosure and the trustees paid off the first trust after they took charge.

The trustees have paid taxes, repairs, insurance, etc. and collected rents during the entire period of their trusteeship.

The property is still owned by the trust estate and rents for \$40.00 per month.

Lot 20, Square 72, 2112 M Street N. W.

The testator, during his lifetime, had caused a foreclosure sale of this property and had procured D. B. Groff to bid it in for him and to give his note for \$6,000.00 secured on the property, at the same time holding the property for the testator. The trustees paid this note as the testator would have been bound to do. The title to the property is still in Mr. Groff, according to the record and the trustees hold an unrecorded deed. They have collected rents and paid taxes, repairs, insurance etc., during the entire period of their trusteeship. The property rents for \$30.00 per month.

Lot 33, Square 388, 917 Desmond Alley.

The testator owned this property at the time of his death, but considered it as not worth the taxes due on it. The executors succeeded in cancelling the greater portion of the taxes, and perfected

235 the title. The trustees have collected rents and paid taxes, repairs, insurance etc., during the entire period of their trusteeship. The property is still owned by the trust estate and rents for \$5.30 per month.

Lot 14, Square 966, 1007 Mass. Avenue N. E.

At the testator's death he held a series of second trust notes secured on this property, the title to which was in Chas. T. Sparo. In November 1899, there were unpaid of these notes 35 of \$50.00 each, total \$1,750.00, and the property was subject to a first trust securing \$5,000.00. The owner had ceased paying. The trustees foreclosed under the second trust and charged against the property the \$1750.00 of second trust notes and \$2,000.00 of the first trust which had been taken up by the executors; also \$3,000.00 remaining of the first trust.

The trustees have collected rents and paid taxes, repairs, insurance etc., during the entire period of their trusteeship.

The property is still owned by the trust estate and rents for \$27.50.

Lot 197, Square 855, No. 654 L Street N. E.

At the testator's death he held a series of second trust notes secured on this property and it was subject to a first trust for \$2,000.00. In September 1900, there were unpaid of the second trust notes, 20 of \$25.00 each and the owner had ceased to pay. The trustees secured a deed to the property, from the owner, without foreclosure and paid off the first trust. They collected rents and paid
236 taxes, repairs, insurance etc., until March 1904 when they sold the property for \$3200.00.

Lot 25, in Square 676, No. 20 H Street N. E.

At the testator's death he held a series of notes secured by second trust on this property and it was subject to a first trust securing \$4,000.00. The executors bought the property under foreclosure of the second trust, in February 1898, when there were due on the second trust notes, 24 of \$50.00 each, which the owner had ceased paying. The trustees paid the first trust note of \$4,000.00, in October 1900 and sold the property in May 1902 for \$6,000.00, having in the meantime, from the beginning of their trusteeship, collected rents and paid taxes, repairs, insurance, etc.

Lot 15, Square 28, 25th & K Street N. W.

At the death of the testator, he held notes for \$3750.00 secured by first deed of trust on this property, which is unimproved. The owners paid some interest and many expedients were resorted to by the executors and trustees to collect in full. Finally, the trust was foreclosed and the property bid in by the trustees, March 12, 1902, since which time they have paid the taxes.

Lots 49 and 50, Square 1029.

The estate held a first trust note of W. I. Boswell, for \$900.00, secured on this property. The trust was foreclosed in October 1902, the trustees bought the property and held it until March 1903, when they sold it for \$1,000.00.

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"Araby"—Farm near Frederick, Md.

This property was purchased by the trustees, under authority from the Court, in May 1901, for \$15,500.00. Since that time they have paid the taxes and kept the property insured.

Lot 5, Square 1282, No. 5 Cooke Place.

At the time of the testator's death he held 23 notes of Anna D. and Harry D. Cooke, for \$100.00 each, secured by second deed of trust on this property, which was subject also to a first trust, securing \$7,000.00.

The trustees foreclosed in October 1902 and bought in the property. They paid off the first trust and held the property, collecting rents and paying taxes, repairs, insurance, etc., until May 1905, when they sold the property for \$9,700.00.

Lot 15, Square 304, No. 1113 "U" Street N. W.

At the time of the testator's death he held 46 notes of R. P. Crenshaw, for \$50.00, secured by second deed of trust on this property. The executors and trustees collected nineteen of these notes, leaving unpaid 27, aggregating \$1350.00, after which the owner ceased to pay. The trustees took up a first trust for \$3,000.00 and on January 28, 1903, sold the property at foreclosure sale and bought it for \$3700.00. They held the property, collecting rents and paying taxes, repairs, insurance, etc., until July 1905, when they sold it for \$4500.00.

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Lot 50, Square 937, No. 419 9th Street N. E.

At the time of the testator's death he held 51 notes of George T. Pulaski, of \$25.00 each secured by second deed of trust on this property, which was subject also, to a first deed of trust securing \$2,000.00. The second trust notes were appraised at \$600.00.

The owner ceased paying and the executors took charge of the property and collected rents from November 1898. The trustees took charge, in the same way, at the beginning of their trust and have collected rents and paid taxes, repairs, insurance, etc., down to the present time. In June 1902, they paid off the first trust of \$2,000.00, and on July 14, 1902, acquired title to the property under foreclosure proceedings. It still belongs to the trust estate and rents for \$20.50 per month.

Lot 51, Square 937, 421 9th Street N. E.

The history of this property is identical with the parcel next above mentioned, down till January 4, 1907, when the trustees sold it for \$3400.00.

Lot 104, Square 623, No. 47 Defrees Street.

At the time of the testator's death he held 40 notes of R. A. Morrison, for \$20.00 each secured by second deed of trust on this property, which notes were inventoried as doubtful, and the property was subject to a first trust securing \$1500.00. The owner ceased to make payments and the Executors got control of the property and collected rents, without any title to it, from April 1897. The trustees had control, in the same way, from the beginning of their trust and have collected rents and paid taxes, repairs, insurance, etc., down to the present time. They took up the first trust loan and during the present year acquired title to the property by foreclosure proceedings. It is still the property of the trust estate and rents for \$15.40 per month.

Lots 1, 6, 7, 9, 17 to 24, Block 13, Edgewood.

At the testator's death he held 29 notes of Harry S. Welch secured by deed of trust on this property, upon which there was a balance due of \$5662.96, and 16 notes of Rachael Sanger, aggregating \$2836.82, similarly secured but wholly unpaid. These notes were all inventoried as "desperate."

The trustees acquired title to the property under foreclosure sales October 12, 1902, and January, 1903, charging against it as purchase price, the amount of the notes in question. They sold lot 18 for \$850.00, in April, 1903. They have paid the taxes on the property since they acquired it and it is still owned by the trust estate.

Lots 6, 7, and 21, Square 550, Nos. 207 and 209 R Street N. W.

At the time of the testator's death he held notes of Thos. F. Barry, amounting to \$950.00, secured by second trust on this property which was subject also to a first trust securing \$6500.00. The owner ceased paying and the executors acquired title to the property under foreclosure sale in November, 1898. The trustees took charge from the beginning of their trusteeship, collected rents and paid taxes, repairs, insurance, etc., paid the first trust in May 1901 and sold the property in March 1902 for \$8,000.00.

Lot 71 in Square 887, 727 L Street N. E.

This property was owned by the testator at the time of his death. The trustees collected rents and paid taxes, repairs, insurance, etc., from the beginning of their trusteeship, down to May, 1906, when they sold the property for \$2,133.72.

The Personal Estate.

The trustees have stated five accounts before the Auditor of the Court. In the following statement the data have been compiled with reference to the periods covered by these reports.

When the inventory of this estate was returned, February 23, 1897, about four months after the death of the testator, it showed, among other items of personal property, more than three thousand promissory notes made by a very large number of persons and in part secured on real estate in the District of Columbia, as follows:

Notes secured by first deed of trust	(at least)	118
Notes secured by second deed of trust	(" ")	2,055
Notes partially secured	(" ")	322
Notes desperate, security worthless	(" ")	487
Notes of some value, doubtful	(" ")	58
		<hr/> 3,040

The executors pursued the policy of collecting the second trust notes and the doubtful notes, as rapidly as possible and investing the proceeds in well-secured first trust notes or in paying incumbrances upon real estate which became necessary to bid in at foreclosure sales or otherwise acquire.

When the trustees took charge of the estate of April 24, 1899, they received from the executors, of the foregoing notes after eliminating desperate and uncollectible notes, including those purchased by the executors, at least 1,520.

Summary of transaction during period of Auditor's first report:

Collected on principal of notes, the same being received in eight hundred and forty-nine payments . .	\$127,467.81
Collected in interest on notes, the same being received in nine hundred and thirty-seven payments .	\$13,939.99
Reinvested in the purchase of notes, forty-nine notes, aggregating	\$74,307.40
Reinvested by paying off trusts on real estate acquired, seventeen transactions	28,816.57
	<hr/> \$103,123.97

Summary of transactions during period of Auditor's second report:

Collected on principal of notes, the same being received in four hundred and twenty-eight payments .	\$54,893.10
Collected interest on notes, the same being received in eleven hundred and five payments	\$20,046.99
Collected from sales of real estate, three parcels	\$12,004.83

Reinvested in purchase of notes, fifty-one notes, aggregating	\$33,776.00
Reinvested by paying off trusts on real estate, thirteen transactions	35,513.08
Reinvested in real estate purchased, two parcels	20,450.13
	<hr/>
	\$89,739.21

Summary of transactions during period of Auditor's third report:

Collected on principal of notes, the same being received in three hundred and sixty payments.....	\$60,384.68
Collected interest on notes, the same being received in seven hundred and sixteen payments	\$17,589.20
242 Collected from sales of real estate, five parcels.....	\$20,200.00
Reinvested in purchase of notes, forty notes.....	\$17,240.00
Reinvested by paying off trusts on real estate acquired, ten transactions	\$51,659.54
	<hr/>
Parcels of real estate acquired, five.....	\$68,899.54

Summary of transactions during period of Auditor's fourth report:

Collected on principal of notes, the same being received in seventy-five payments	\$23,568.00
Collected interest on notes, the same being received in two hundred and eighty-one payments.....	\$10,733.49
Collected from sales of real estate, five transactions..	\$17,939.59
Reinvested in purchase of notes, fourteen notes.....	\$15,000.00
Reinvested by paying off trusts on real estate, two parcels	\$18,000.00
	<hr/>
	\$33,000.00

Summary of transactions during period of Auditor's fifth report:

Collected from principal of notes, the same being received in one hundred and twenty-one payments..	\$29,393.00
Collected interest on notes, the same being received in two hundred and forty-eight payments.....	\$11,250.60
Collected from sales of real estate, three parcels.....	\$8,930.42
Reinvested in purchase of notes, ten notes.....	\$35,150.00
Reinvested by paying off trusts on real estate, one transaction	\$6,000.00
Reinvested in purchase of real estate, one parcel.....	150.00
	<hr/>
	\$41,300.00

243 *General Summary of Five Reports of Auditor.*

Collected principal of notes in 1833 payments.....	\$295,705.59
Collected interest on notes in 3287 payments.....	\$72,560.27
Collected from 15 sales of real estate.....	\$58,074.84
Total collections from these three sources....	\$426,340.70

Reinvestments.

In purchase of 164 notes.....	\$175,473.40
In paying off 43 trust notes.....	\$139,989.19
In purchase of 3 parcels of real estate.....	\$20,600.13
Total reinvestments	\$336,062.72

The foregoing does not include under the head of reinvestments, the numerous transactions where real estate was acquired under foreclosure sales or by direct deeds from the owners where the foreclosure was had or the deed obtained, on account of second trust indebtedness. It includes only the sums paid out to take up first trusts on property thus held or acquired, or owned by the testator at the time of his death. The history of the various transactions is shown in the separate statement concerning the real estate.

An examination of the schedules and the Auditor's reports shows that the estate, coming into the hands of the trustees, consisted largely of promissory notes secured by second deeds of trust on real estate in the District of Columbia.

Wherever it was possible these notes, some of them for small amounts, were collected and the proceeds invested in first trust notes or used in paying off incumbrances on real estate belonging to the trust estate.

As collections were made, whether of first or second trust notes, the money was exclusively invested in loans secured on real estate in the District of Columbia, some at five per cent. per annum and some at six per cent., but none at less than five, except as it was used to pay off incumbrances as above stated.

Every dollar of principal so invested and the interest thereon, as it matured, was paid, and not one dollar lost to the estate on any investment so made by the trustees.

Such investments necessitated a great deal of work on the part of the trustees, but they yielded more income, because good bonds, of the kind that trust funds are usually invested in, return not more than four per cent. and can be had only at a premium.

SAMUEL MADDOX.
SAML A. DRURY.

July 7, 1909.

245 *Complainants' Exceptions to the Auditor's Report.*

Filed March 30, 1910.

* * * * *

Now come the complainants, Alexander R. Magruder and Isabel R. Magruder, by their solicitor, and take and present the following exceptions to the Auditor's report filed herein on the 16th day of March, 1910:

1. They except to the Auditor's finding, "that the trustees are well entitled to the commission which they claim, five per cent. on that part of the principal upon which they have received no commissions and ten per cent. on the income."

Rep., p. 16.

2. They except to the Auditor's finding that the amount of the "principal estate" on which a commission is now chargeable is to be held to be and considered the amount of the personal estate received by the trustees from the executors and the proceeds of the sale of certain real estate without taking into consideration and without reference to the amount of the "principal estate" or the amount of the personal property that was actually turned over to the beneficiaries under the final decree of distribution entered July 9th, 1909, notwithstanding the fact that the "principal estate" and the personal property received by the beneficiaries was greatly less than the "principal estate" and personal property received by the trustees.

3. They except to the Auditor's finding that the "principal
246 estate" on which the trustees are entitled to a commission of five per cent. is the sum of \$313,321.34 and that there is now payable to the trustees out of the money in their hands five per cent. on that amount, which is \$15,666.06 less \$2,348.10 heretofore paid to the trustees as commissions on sales of real estate, the net amount found due as commissions on the principal estate being \$13,317.56.

Rep., p. Schedules I & J.

4. They except to the Auditor's finding that in determining what is justly due to the trustees as commissions and payable out of the moneys in their hands, no consideration is to be given to and no charge or deduction is to be made for or in respect or on account of the sum of \$16,100, received by Mr. Drury of the moneys of the estate after the appointment of the trustees under the decree entered in this cause on April 1st, 1899, and retained by him as compensation for his services alleged to have been previously rendered.

Rep., p. 3, et seq.

5. They except to the Auditor's finding that the sum of \$18,800, being the first item of credit claimed by the trustees in their first account and credited as "commissions to executors allowed by Probate Court," should not be charged to the trustees or considered in

determining what compensation or commission the trustees are entitled to in addition to what they have already received.

Rep., p. 3, et seq.

6. They except to the Auditor's finding that the admitted fact that the firm of which the trustee Drury is a member, the
247 firm of Arms and Drury, sold at their face value with accrued interest to the trustees, Drury and Maddox, several hundred thousand dollars' worth of promissory notes, which the firm of Arms and Drury had bought at a discount, "has no bearing on the question presented for determination and report," the question being what commission Mr. Drury is now entitled to on the principal of the estate.

Rep., p. 7 et seq.

7. They except to the Auditor's refusal to make any inquiry as to the amount paid by Arms and Drury for the notes sold to the trustees and to his refusal to consider the pecuniary profits derived by Mr. Drury from the sale to the trustees of notes purchased of Arms and Drury; a proper and material matter to be taken into account in determining what compensation the trustees are entitled to receive in addition to what they have already received.

8. They except to the Auditor's finding in respect of such purchase by the trustees and in the absence of any evidence proving or tending to prove that such purchase by the trustees of their own firms are customary, and that as "the customs with respect to these transactions are so well known and so well fixed that it might perhaps be well claimed the Court may take judicial notice of them."

Rep., p. 9.

9. They except to the Auditor's finding that whatever commissions were paid to Arms and Drury for the collection of rents or for the placing of insurance, etc., and whatever moneys were obtained
248 by Arms and Drury from the sale of notes to the trustees in excess of the sums paid by Arms and Drury for the notes so sold are matters which do not in anyway affect the question of the amount of compensation justly due to the trustee from the estate.

Rep., p. 7, 8 & 9.

10. They except to the Auditor's finding that Alexander R. Magruder is entitled to no commission or compensation as trustee.

11. They except to the Auditor's finding that of the cash balance which the Auditor finds to be in the hands of the trustees, to wit, the net sum of \$14,897.34, the trustees are entitled to retain \$14,046.82 and that the beneficiaries are entitled to be paid the remainder of said first-mentioned sum, to wit, \$850.52, and no more, and they say:

(a) That there was no sufficient evidence before the Auditor to prove that the services of the trustees were reasonably worth the amount allowed by the Auditor.

(b) That the compensation found by the Auditor to be due to the trustees is grossly excessive, in view of the fact that the amount of the principal estate turned over to the beneficiaries in pursuance of the decree for division entered July 9th, 1909, including real estate is but \$261,202.21, and excluding the value of the real estate and money in the hands of the trustees is but \$122,251.47, while the amount of the commissions found due the trustees, including what they have already been paid, and including the sum paid to Mr. Drury, executor and trustee, is \$47,782.12, and excluding the amount paid to Mr. Drury, executor and trustee, is \$26,284.12.

249 (c) That such compensation is grossly excessive and unwarranted, in view of the erroneous basis on which the commissions allowed to the trustees are reckoned by the Auditor, and in view of the pecuniary profit and advantage the defendant Drury has obtained from his dealings with the estate.

12. They except to the finding of the Auditor in respect of the trustees' first account approved by the Auditor, that he has no authority to open or reform said account or pass upon the allowance to the executors, and the credit to the trustees appearing therein, while at the same time he finds that "a tacit understanding appears to have been arrived at by counsel that the account should be reopened," and proceeds to reopen the account, and to himself personally ascertain from the books of Mr. Drury, what the transactions of the trustees were, and what moneys of the estate were received by them from the date of their appointment, April 1st, 1899, and the 24th of April, 1899, and makes use of the facts so ascertained in fixing the sum on which the trustees are allowed a commission of five per cent.

Report, p. 4, Schedule I.

13. They except to the Auditor's finding that the present audit will terminate the trust of the trustees, and they aver that the bill of complaint filed in this cause, the answer of the defendant Drury thereto, the decree appointing the trustees, the order of reference passed herein on the 18th of October, 1899, and the proceedings of the Auditor herein, entitle them to an accounting in this court

by the said trustees in respect of the entire estate of William A. Richardson, deceased, not only as to the estate and property which the trustees received from the executors, but also as to the estate and property received by the executors, of whom Samuel A. Drury was one, he also being a trustee, and particularly as to the estate and property which was disposed of with the consent and co-operation of the trustees; and they aver that the accounts of the trustees cannot be finally stated until such an accounting is had.

14. They except to the Auditor's finding that the Auditor's fee of \$600 is chargeable to the beneficiaries and payable out of the cash in the hands of the trustees.

NATHL. WILSON,

Sol. for Compl'ts.

Decree Overruling Exceptions.

Filed November 7, 1910.

* * * * *

This case came on to be heard upon the plaintiffs' exceptions to the Auditor's Report numbered from one to fourteen inclusive, and the same having been heard upon the arguments of counsel and on their briefs, and having been considered upon the whole record, it is now adjudged and decreed; That said exceptions are and each of them is, insufficient to require the recommitment of the case to the Auditor; and it is ordered that said exceptions be, and

251 they hereby are severally overruled.

Done in Court this seventh day of November, A. D. 1910.

WENDELL P. STAFFORD, *Justice.*

Final Decree.

Filed November 15, 1910.

* * * * *

This cause having come on for hearing upon the exceptions to the final Report of the Auditor therein, filed on the 16th day of March, 1910, having been argued by the solicitors for the respective parties, and duly considered by the court, and the said exceptions having been overruled by an order passed herein on the 7th day of November, 1910, it is thereupon by the court, this 15th day of November, A. D. 1910, further adjudged, ordered and decreed, that the said Auditor's Report be, and the same hereby is, finally ratified, confirmed and approved; that Samuel A. Drury and Samuel Maddox, the Trustees by the court in this cause appointed, be, and they hereby are, authorized and directed to make distribution of the trust funds remaining in their hands as such Trustees in accordance with the said Report, and that, upon their filing in this cause their vouchers, showing such distribution by them, the said Samuel A. Drury and Samuel Maddox be, and they hereby are, discharged of and from their said office of Trustees under their said appoint-

252 ment by the court in this cause.

WENDELL P. STAFFORD, *Justice.*

From this decree an appeal is noted in behalf of the plaintiffs and the amount of the bond, to operate as a supersedeas, is fixed at the sum of one thousand dollars.

WENDELL P. STAFFORD, *Justice.*

Appeal of Plaintiffs to Court of Appeals.

Filed November 29, 1910.

* * * * *

Now, to wit November 29, 1910, come the plaintiffs, Alexander R. Magruder and Isabel R. Magruder, and appeal to the Court of

Appeals of the District of Columbia from the decree and order of the Court entered herein on the seventh day of November, A. D. 1910, adjudging that the plaintiffs' exceptions to the Auditor's report are insufficient to require the recommitment of the case to the Auditor and ordering that the plaintiffs' exceptions to the Auditor's report be severally overruled; and from the decree of the Court entered herein on the fifteenth day of November, A. D. 1910, finally ratifying, confirming and approving the Auditor's report therein mentioned, and directing the trustees therein named to make distribution of the trust funds remaining in their hands as such
 253 trustees in accordance with said report, and discharging the trustees therein named from their office of trustees under their appointment in said cause.

NATHL. WILSON,
Attorney for Plaintiffs.

Memorandum.

November 29, 1910.—Bond by Plaintiffs on appeal for \$1,000 approved and filed.

Designation of Record.

Filed December 2, 1910.

* * * * *

To the Clerk of the Supreme Court of the District of Columbia:

In making up the transcript of the record for transmission to the Court of Appeals, on the appeal taken to that Court by the appellants, the plaintiffs in said cause, from the decrees entered therein by the Supreme Court of the District of Columbia on the 7th and 15th days of November, 1910, you will please include in the transcript to be sent to the Court of Appeals the following parts of the record and of the following papers on file and constituting a part of the record in the case, namely:

- 254 1. The amended bill of Complaint.
2. The will of William A. Richardson, an exhibit to the bill.
3. The answer of Samuel A. Drury.
4. The decree entered April 1st, 1899, appointing Samuel A. Drury and Samuel Maddox, trustees.
5. The order referring the case to the Auditor, entered October 18th, 1899.
6. The Auditor's first report filed December 19th, 1907, and schedules attached, except B, C, D, E, F and G.
7. Order referring case to the Auditor January 15th, 1909.
8. Trustees' Sixth report and supplemental account filed as of January 17th, 1909, and to September 24, 1909.
9. Petition of Alexander R. and Isabel R. Magruder filed June 16th, 1909, and exhibit D to petition.
10. Decree of Partial distribution, July 9th, 1910.

11. Second reference to Auditor after the death of Col. Payne, February 3rd, 1910.

12. The testimony taken before the Auditor returned with the Auditor's report and the evidence filed with the report, including—

13. The inventory filed in the Probate Court at Cambridge, Mass., February 1st, 1897.

14. The petition of Richardson and Drury, Executors, 255 to the Probate Court, April 4th, 1899.

15. Order of Probate Court to Executors, April 11th, 1899.

16. Account of executors, filed in Probate Court April 25th, 1899.

17. Auditor's report and schedules, filed March 16, 1910. (Omitting schedules attached thereto containing lists of notes and enumeration of properties.)

18. Trustees' general statement, submitted to Auditor and returned as Exhibit No. 3.

19. Exceptions to Auditor's report, filed March 30th, 1910.

20. Decree overruling exceptions, entered November 7th, 1910

21. Decree directing distribution according to Auditor's report.

22. Appeal to Court of Appeals, filed November 29th, 1910.

23. Bond.

NATHL. WILSON,
C. R. WILSON,
For Pl'tfs & Appellants.

256 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing numbered from 1 to 255, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 20037 in Equity, wherein Alexander Richardson Magruder, et al. are Plaintiffs and Samuel A. Drury, et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 14th day of January, 1911.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2265. Alexander R. Magruder et al., appellants, vs. Samuel A. Drury et al. Court of Appeals, District of Columbia. Filed Jan. 16, 1911. Henry W. Hodges, clerk.

ADDITION TO RECORD PER STIPULATION OF COUNSEL.

Court of Appeals, District of Columbia

JANUARY TERM, 1911.

No. 2265.

ALEXANDER R. MAGRUDER AND ISABEL R. MAGRUDER,
APPELLANTS,

vs.

SAMUEL A. DRURY AND SAMUEL MADDOX, TRUSTEES.

FILED MARCH 6, 1911.

Court of Appeals of the District of Columbia, January Term, 1911

No. 2265.

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants,

vs.

SAMUEL A. DRURY and SAMUEL MADDOX, Trustees, Appellees.

It is hereby stipulated by and between the counsel for the appellants and the appellees in the above entitled cause that Schedules A, B, D, E, G, H, I and J, hereto annexed and certified to by the Clerk of the Supreme Court of the District of Columbia as being true copies of original schedules filed with the Auditor's report, shall be filed and considered as a part of transcript of record herein.

March 4, 1911.

NATH'L WILSON,

Solicitor for Appellants.

J. J. DARLINGTON,

Solicitors for Drury & Maddox.

SCHEDULE A.

Sixth Account of Samuel A. Drury and Samuel Maddox, Trustees.

Dr.

To Principal personal estate in hand per last report of Auditor filed May 17, 1907, as follows:

Household furniture and effects.....	1,500.00	
Stock of Northern Railroad, 34 shares.....	5,270.00	
“ “ Bigelow Carpet Co. 35 “	2,625.00	
Promissory notes, per Schedule E.....	138,642.00	
Furniture, stock and implements of Farm Araby....	1,200.00	
Cash	1,389.81	
		150,626.81
Proceeds of sale of land and premises No. 421 9th Street, N. E.	3,400.00	
Nett proceeds judgment against United States.....	500.00	
		154,526.81
		154,526.81

Cr.

By Auditor's Fees	600.00	
Transferred to income Account, Schedule F	1,384.31	
		1,984.31
Balance of principal personal estate.....		152,542.50
Consisting of the following:		
Household furniture and effects.....	1,500.00	
Stock Northern Railroad, 34 shares..	5,270.00	
“ Bigelow Carpet Co., 35 “ ..	2,625.00	
Promissory notes in hand per Schedule C	127,050.16	
Cash	14,897.34	
Furniture, stock and implements on farm Araby	1,200.00	
Totals	152,542.50	152,542.50

The above balance of cash being subjected to the allowances of trustees' commissions on final accounting, as shown by Schedule J, the actual balance of cash for which trustees are accountable would be as follows:

Cash on hand	14,897.34
Less allowances to trustees, per Schedule J.....	14,046.42
Actual balance of cash for which trustees are accountable	850.92

To which add Stock, notes, furniture and other effects,
per this Schedule 137,645.16

Total personal estate for which trustees are
liable after deducting allowances..... 138,496.08

LOUIS A. DENT, Auditor.

SCHEDULE B.

Principal Cash Account.

Dr.

To Balance in hand per last report.....	1,389.81
Principal of notes collected.....	38,587.84
Proceeds of sale of 421 9th St., N. E.....	3,400.00
" " " judgment against United States.....	500.00
	<hr/>
	43,877.65

Cr.

By Principal of notes purchased.....	26,996.00
Auditor's Fees	600.00
Transferred to income account....	1,384.31
	<hr/>
	28,980.31
Balance of Cash	<hr/>
	14,897.34

LOUIS A. DENT, Auditor.

SCHEDULE D.

Account of Notes Paid and Notes Purchased Since Last Report.

Dr.

To Notes paid as follows:

Aguilar, Y. two notes \$500 each.....	1,000.00
Brown, Lee, a/c installment.....	105.84
Crowdy, William S., 3 at \$500 each.....	1,500.00
Groff, D. B., account installment.....	1,400.00
" " " Balance	700.00
Holman, B. W., on account.....	500.00
King, C. W., Jr.	1,000.00
" " "	500.00
Morrissey, Emma, 19 notes \$10. each.....	190.00
Newton, George F.	1,500.00
Palmer, W. J. 4 notes \$2,000 each.....	8,000.00
" " " 4 " 500 "	2,000.00
Payne, John C.	2,000.00
" " " 7 notes \$24, each.....	168.00
" " "	14.00

Richardson, R. C., Balance.....	3,500.00
Robinson, Jesse D., 2 notes \$500 each.....	1,000.00
Simmons S. S. 18 " 25 ".....	450.00
Stein, Robert 20 " 28 ".....	560.00
Wardman, Harry 10 " 1,000 ".....	10,000.00
West, Catherine	2,500.00
	<hr/>
	38,587.84
	<hr/>
	38,587.84

Cr.

By Notes purchased as follows:

Aguilar, Y., 3 notes \$500 each.....	1,500.00	
Brown, Lee	2,000.00	
Brown, Lee, installment.....	1,400.00	
Draper, W. A.	2,000.00	
Lowery, George C., 2 notes \$1,000 each.....	2,000.00	
" " "	500.00	
Stein, Robert, 57 notes \$28, each.....	1,596.00	
Wardman, Harry, 12 notes \$1,000 each.....	12,000.00	
" " 2 " \$2,000 each.....	4,000.00	
	<hr/>	26,996.00
Cash proceeds of notes not re-invested.....		11,591.84
" principal per last report.....		1,389.81
" " received since.....		3,900.00
		<hr/>
		16,881.65
Less excess of expenditure on account of income	1,384.31	
Auditor's fees.....	600.00	
	<hr/>	1,984.31
Balance cash per Schedule B.....		14,897.34

LOUIS A. DENT, Auditor.

SCHEDULE E.

Report of Real Estate Included in the Trust.

Square 71, Lot 26; premises 1112 New Hampshire Avenue; Title vested in trustees of estate; title obtained from Drury & Groff, trustees; date of Deed May 11, 1897; liber 2451, folio 247; Rental \$30.50; insurance \$2,500; assessed value 3,741.

Square 72, Lot 20; premises No. 2112 M St., N. W.; title vested in Diller B. Groff; rental \$35.00; insurance \$5,000; assessed value \$4,120.

Square 28, Lot 15; unimproved; title vested in Drury & Maddox, trustees; title obtained from Drury and Heiskell trustees; date of deed, April 23, 1902, Liber 2645, folio 57; assessed value \$3,345.

Square 127, Lots 12, 13 and 14. Premiums 1739 H St., N. W., title vested in Wm. A. Richardson, title obtained from N. L. Anderson; date of deed January 23, 1885; liber 1116, folio 47; insurance \$10,000; assessed value \$30,449.

Square 211, Lot D; premises No. 1424 Rhode Island Avenue, N. W.; title vested in Drury and Maddox, trustees; title obtained from Edmonston and Drury, trustees; date of deed, Sept. 21, 1897; liber 2236, folio 430; vacant; insurance \$6,000; assessed value \$8,031; Remarks, deed to E. F. Caverly and by him to trustee.

Square 240, Lot 48; premises 1332 R Street, N. W., title vested in Drury and Maddox, trustees; title obtained from Arms and Drury, trustees; date of deed, Dec. 2, 1898, liber 2375, folio 15; vacant; insurance \$5,000; assessed value \$4,500; remarks, deed to E. F. Caverly and by him to trustees.

Square 235, Lot 140; premises 1306 W. Street, N. W., title vested in Drury and Maddox, trustees, title obtained from Drury and Groff, trustees, date of deed, Oct. 27, 1897, liber 2891, folio 163; rental \$30; insurance \$3,000; assessed value \$2,590; remarks deed to E. F. Caverly and by him to trustees.

Square 235, lot 41, premises 1308 W. St., N. W.; title vested in Drury and Maddox, trustees; title obtained from Arms and Drury, trustees; date of deed, April 2, 1897, liber 2471, folio 149; rental \$30; insurance \$3,000; assessed value \$2,590; Remarks, deed to E. F. Caverly and by him to trustees.

Square 235, lot 146, premises 2131 13th St., N. W., title vested in Drury and Maddox, trustees; title obtained from Drury and Groff, trustees; date of deed Mar. 8, 1898; liber 2306, folio 34, rental \$30; insurance \$3,500; assessed value \$3,093; remarks, deed to J. T. Arms and by him to trustees.

Square 304, lot 22; premises 2009 12th St., N. W.; title vested in Drury and Maddox, trustees; title obtained from Drury, surviving trustee; date of deed Nov. 3, 1897, liber 2882, folio 239; assessed value \$2,871; remarks, deed to J. T. Arms and by him to trustees; rental value \$30; insurance \$2,500.

Square 304, lot 23, premises 2011 13th St., N. W., title vested in Drury and Maddox, trustees; title obtained from Drury, surviving trustee, date of deed Nov. 3, 1897; liber 2882, folio 331; rental \$30; insurance \$2,500; assessed value \$2,871; remarks deed to J. T. Arms and by him to trustees.

Square 386, Lot 33; premises 917 Desmond Alley; title vested in Drury and Maddox, trustees; title obtained from John T. Arms; date of deed, June 19, 1903; Liber 2723, folio 294; rental \$5.30; no insurance; assessed value \$300.

Square 966, Lot 14, premises 1007 Mass. Ave., N. E.; title vested in Drury and Maddox, trustees; title obtained from Charles T. Sparo; date of deed Nov. 26, 1894, liber 2471, folio 146; rental \$27.50; insurance \$4,000; assessed value \$3,366; remarks, deed to Drury and by him to trustees.

Square 981, lot 119, premises 814 12th Street, N. W., title vested in Drury and Maddox, trustees; title obtained from Arms and Randolph, trustees; date of deed, Dec. 19, 1896; liber 2192, folio 93;

rental \$20.50; insurance \$2,500; assessed value \$1,744; remarks, deed to Drury and by him to trustees.

Square 937, lot 50; premises 149 9th Street, N. E., title vested in Drury and Maddox, trustees; title obtained from Drury, surviving trustee; date of deed, July 15, 1902, liber 2642, folio 453; vacant; insurance \$2,000; assessed value \$1,905.

Mt. Pleasant, lot 187; premises 3042 14th St., N. W., title vested in Drury and Maddox, trustees; title obtained from Alle Fort Gibbs; date of Deed, May 15, 1899, liber 2402 folio 86; vacant; insurance \$3,000; assessed value \$3,814.

Block 13, Le Driot park, lot 28; premises 322 U. St., N. W., title vested in Drury and Maddox, trustees; title obtained from A. K. Philipps, trustee; date of deed Mar. 3, 1898, Liber 2451, folio 250; rental \$20.50; insurance \$2,500; assessed value \$2,041; remarks, deed to J. T. Arms and by him to trustees.

Block 6, Edgewood, lots 1, 6 to 9,—16, 18 to 24; unimproved; title vested in Drury and Maddox, trustees; deeds from Leighton A. Emmons, trustees; date of deeds Dec. 6, 1894 and Jan. 23rd, 1903; liber 2654, folio 466; and liber 2693 and folio 467; assessed value \$4,190.

Block 10, Isherwood, Lots 1 to 7; unimproved; assessed value \$2,065; remarks, Drury and Maddox, trustees, hold the tax title to these lots, but have never foreclosed under the deed of trust which they hold, which was made by James H. Meriwether.

Araby Farm; title vested in Drury and Maddox, trustees; title obtained from Mina L. Mercer; insurance \$8,900.

LOUIS A. DENT, Auditor.

SCHEDULE G.

Account of Trustees of the Eliza C. Magruder Trust.

Principal.

Dr.

To Principal personal estate in hand per last report of Auditor, as follows:

Notes:

Ellen Curtin	\$500.00
C. C. Dawson	1,000.00
D. W. Groff,	2,500.00
Harry Wardman	1,000.00

5,000.00

Cash

300.00

5,300.00

Collections:

Notes of Wardman	1,000.00	
" " Dawson	1,000.00	
" " Curtin	500.00	
		<hr/>
		2,500.00
		<hr/>
		7,800.00

Cr.

By Amount of Curtin note, paid.....	500.00	
Amounts reinvested in Chiswell & Kite Note	1,000.00	
Kite note	1,000.00	
Auditor's fees	25.00	
Amounts transferred to Income....	165.13	
		<hr/>
		2,690.13
		<hr/>
Balance on hand.....		5,109.87
		<hr/>
		5,109.87

Consisting of notes of:

D. B. Groff.....	2,500.00	
Chiswell & Kite	1,000.00	
H. A. Kite	1,000.00	
Cash	609.87	
		<hr/>
Totals	5,109.87	5,109.87

Real Estate.

Property in St. Louis, Missouri.
 Premises No. 1121 15th St., Northwest, in Washington, D. C.
 Premises No. 441, Franklin Street, Washington, D. C.

LOUIS A. DENT, Auditor.

SCHEDULE H.

Account of the Trustees of the Eliza C. Magruder Trust.

Income.

Dr.

To Balance of cash per last report of Auditor, filed May 17, 1907	123.67
Collections of rent.....	2,376.04
" " interest	759.31
Amount transferred from principal.....	165.13
	<hr/>
	3,424.15

Cr.

By Taxes	382.90	
Repairs	411.75	
Water Rents	45.00	
Insurance	34.50	
Eliza C. Magruder	2,550.00	
Totals	3,424.15	3,424.15

LOUIS A. DENT, Auditor.

SCHEDULE I.

Showing Basis Upon Which Allowances Are Made to Trustees.

Principal Estate.

Amount of personal estate received from executors,
per first report of Auditor..... \$270,209 04

To which add:

1. Errors in note account per second report of Auditor	2,385 00
2. Desperate notes of Boswell collected per second report of Auditor.....	2,090 00
3. Proceeds of sale of real estate, per second report of Auditor	12,004 83
4. Proceeds of sales of real estate, per third report of Auditor	20,200 00
5. Proceeds of sale of real estate, per fourth report of Auditor	17,939 69
6. Proceeds of sale of real estate, per fifth report of Auditor	8,930 42
7. Proceeds of sale of real estate, per this report.....	3,400 00
8. Net proceeds of judgment against United States, per this report	500 00
	337,658 98

And from this deduct—

Notes and cash part of principal, personal estate, not received from executors, but paid (per books of account of executors and trustees) between the date from which first report of Auditor covered, and the date to which the account of executors covered, viz, from April 1st to April 24, 1899, overlapping period of two accounts.. \$17,143 77

Notes dropped from good assets per third report of Auditor as uncollectible

2,669 50

Appraised value of household effects, etc., upon which commissions are not asked by trustees	4,460 00	
Erroneous debits per second report of Auditor	65 37	
		<hr/> \$24,337 64

Balance principal upon which trustees are entitled to commissions	\$313,321 34
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Upon items 4, 5, and 6, added herein, the Auditor allowed commissions at 5% as shown in Schedule J, so that the net principal upon which commissions are now properly allowable is:

Balance above	\$313,321 34
Deduct	46,970 00
Net	<hr/> \$266,351 34

Income.

Income per first report of Auditor	\$20,741 59
" " second " " "	35,397 83
" " third " " "	32,357 36
" " fourth " " "	20,614 19
" " fifth " " "	16,761 09
" " this " " "	26,312 70

Total income upon which trustees are entitled to commissions	<hr/> \$152,184 76
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From which deduct amounts upon which commissions were allowed by Auditor, first to fifth reports, inclusive, at 10%	<hr/> 125,872 06
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Balance, income this account, upon which trustees are entitled to commission	\$26,312 70
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LOUIS A. DENT, Auditor.

SCHEDULE J.

Statement of Allowances of Commissions to Samuel A. Drury and Samuel Maddox, Trustees.

Commissions on net principal personal estate and proceeds of sale of real estate per Schedule I, 5% on \$313,321.34	\$15,666 06
Less allowed on proceeds of real estate in third report of Auditor and deducted in fourth report, 5% on \$20,200	\$1,010 00

Allowed on proceeds of real estate and deducted on fourth report of Auditor, 5% on \$17,839.69	891 98	
Allowed on proceeds of real estate and deducted in fifth report of auditor, 5% on \$8,930.42	446 52	
		2,348 50
Net commissions on principal personal estate, at 5%, chargeable against the cash balance in the hands of trustees		\$13,317 56
Commissions on net collections of income, per Schedule I, 10% on \$152,184.76		15,218 47
Less allowed first report of Auditor, 10% on \$20,741.59	\$2,074 16	
Second report of Auditor deducted in third report, 10% on \$35,397.83	3,539 73	
Third report of Auditor, deducted in fourth report, 10% on \$32,357.36 ...	3,235 74	
Fourth report of Auditor, deducted in 4th and 5th reports, 10% on \$20,614.19	2,061 42	
Fifth report of Auditor, 10% on \$16,761.09	1,676 10	
		12,587 20
Net commissions on income, 10%, chargeable against the cash balance in the hands of the trustees		\$2,631 27
Recapitulation of Allowances.		
On principal estate		\$13,317 56
On income		2,631 27
Total allowances		15,948 83
Less commissions paid to agents:		
Third report of Auditor	\$433 05	
Fourth report of "	416 12	
Fifth " " "	445 03	
This " " "	408 21	
		\$1,702 41
Less counsel fee allowed in first report of Auditor and charged back by consent	200 00	
		1,902 41
Net commissions to trustee		\$14,046 42

Cash in hands of trustees per Schedules, A, B and D.....	\$14,897 34
Less commissions above	14,046 42
Balance of cash to be paid over by trustees	\$850 92

LOUIS A. DENT, *Auditor.*

Explanation of Differences in Cash.

Cash balance reported by trustees.....	\$15,526 41
Deduct Auditor's fee.....	\$600 00
Magruder trust interest	25 00
Additional credit, auctioneer since account filed	11 00
	636 00
Add insurance to be refunded from Magruder trust \$7 and \$7.50 and \$20.....	14,890 41
	34 50
	14,924 91
Add differences expenses to agents total	490 21
Less repairs	12 00
Magruder bond	20 00
Safe deposit box	50 00
	82 00
	408 21
Down	82 00
Allowed to repairs	12 00
Allowed safe deposit box.....	50 00
	62 00
Difference loss on bond.....	20 00
	14,944 91
Less agents' commissions refunded.....	47 57
Cash balance Auditor's report.....	\$14,897 34

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,

District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify that the foregoing and annexed writings are true and correct copies of original Schedules, filed with the Au-

ditor's Report of March 16, 1910, in Equity Cause No. 20037, Alexander Richardson Magruder and Isabel Richardson Magruder, Plaintiffs, and Samuel A. Drury, Defendant, which schedules were inadvertently omitted from the transcript of record heretofore submitted to the Court of Appeals.

In witness whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 3rd day of March, A. D. 1911.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

[Endorsed:] No. 2265. Alexander Richardson Magruder et al. vs. Samuel A. Drury. Addition to Record per Stipulation of Counsel. Court of Appeals, District of Columbia. Filed Mar. 6, 1911. Henry W. Hodges, Clerk.

WEDNESDAY, *October 11th, A. D. 1911.*

No. 2265.

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants,
vs.
SAMUEL A. DRURY and SAMUEL MADDOX, Trustees.

On motion the appellants are allowed to file memorandum herein if so advised.

The argument in the above entitled cause was commenced by Mr. Nathaniel Wilson, attorney for the appellants, and was continued by Mr. J. J. Darlington, attorney for the appellees.

THURSDAY, *October 12th, A. D. 1911.*

No. 2265.

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants,
vs.
SAMUEL A. DRURY and SAMUEL MADDOX, Trustees.

The argument in the above entitled cause was continued by Mr. J. J. Darlington, attorney for the appellees, and was concluded by Mr. Nathaniel Wilson, attorney for the appellants.

No. 2265.

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants,
vs.
SAMUEL A. DRURY and SAMUEL MADDOX, Trustees.

Opinion.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from a decree confirming the auditor's report settling the final account of the trustees of the estate of William A. Richardson, deceased, and ordering their final discharge.

Judge William A. Richardson died in the District of Columbia October 19, 1896, leaving a will executed August 9, 1895. He had resided in the District for many years, being at the time of his death Chief Justice of the Court of Claims. The will recites that he is a citizen and inhabitant of Cambridge, in the county of Middlesex, commonwealth of Massachusetts. After making certain special bequests, he devised and bequeathed all the rest and residue of his estate to his executors upon the following trusts: To collect the income of the principal, pay taxes, insurance, repairs, and other expenses. To expend so much of the income (and of the principal,

if necessary in case of an emergency) to be used as may be required for the support of his daughter Isabel Richardson Magruder and for the support and education of her children. If the daughter live until a child marries, has a family, or cease from any cause to live with her, then the income shall be apportioned among her and her children by the executors, in such proportion as they deem best. The executors are authorized to permit the daughter and children to occupy the residence in the city of Washington and to use the household goods, etc., or provide another residence for them, if in their discretion they should conclude to sell or lease the homestead. Provision was made for advancements to the children under certain conditions. It was provided that at the decease of the daughter the whole trust estate, including what remained of the original investments real or personal, made by the executors, and all personal chattels not used by his daughter in the maintenance of herself and family, should be given to the children of the daughter then living, or to the issue of any deceased child free and discharged from any further trusts, provided that one half shall be turned over to such child at the age of 23 and the other half at the age of 26 years.

The executors were empowered to sell at private sale, and to convey any part of the real and personal estate; to execute any agreements to convey real estate, and any declarations of trust made by the testator which may be outstanding at the time of his decease.

George F. Richardson of Lowell, Mass., and Samuel A. Drury of Washington, D. C., were appointed executors of the will and no bond was required of them. A grandson, Alexander R. Magruder, was named to be appointed by the Probate Court an additional co-executor when he attained the age of 21 years.

Whenever a vacancy should occur in the office of executor, it was directed that in the place of George F. Richardson a Massachusetts man be appointed; in the place of Samuel A. Drury a business man of the city of Washington, or one of the loan and trust companies of the said city. It was provided that the executors shall be paid each for the actual services rendered by himself only and they shall not be responsible for each other's acts.

The final clause was: "Whatever powers, authority or discretion I have given to my executors I give to whosoever shall settle my estate, and I see no reason why my executors may not perform all the duties of the trust under their appointment as executors, without being specially bonded as trustees."

Pursuant to the request of the testator the said will was filed for probate in the Probate Court of Middlesex County, Massachusetts, and duly admitted to probate there. The testator left one child, his daughter Isabel, then the wife of Alexander F. Magruder. She died in the District April 4, 1898, leaving as her heirs at law and next of kin Alexander R. Magruder and Isabel R. Magruder. On December 30, 1898, the said Alexander R. Magruder and Isabel R.

Magruder by their father and next friend, Alexander F. Magruder filed a bill in the Supreme Court of the District naming George F. Richardson and Samuel A. Drury, defendants. Samuel Maddox, one of the appellees, filed the bill as solicitor of complainants. After reciting the facts relating to the will and the relationship of the complainants to the testator and the death of Isabel R. Magruder, the bill charged that said William A. Richardson had been a resident of the State of Massachusetts up to the 11th of April, 1872, at which time he became assistant secretary of the United States Treasury and removed with his family to the city of Washington, where he thereafter made his home until his death. During that period he was Secretary of the Treasury from the 17th of March, 1873, to 2d day of June, 1874; Associate Justice of the Court of Claims from July 2, 1874, to January 20, 1885, and Chief Justice of that court from January 20, 1885, to the date of his death. During all that time he continued to live with his family in the city of Washington, which he repeatedly declared was to be his home for the rest of his life. After removing to the said city, he did not exercise any of the rights of citizenship in the State of Massachusetts and did not even return to the said State more than a few times and then only for short visits.

In September, 1876, he bought a burial lot in the District of Columbia, and had his deceased wife buried therein. At his request his body was also interred in said lot.

Early in the year of 1885 he purchased a lot in the city of Washington and erected a dwelling at a cost of \$35,000. In this house he lived until his death, and his daughter Isabel made said house her home after his death by permission of defendants.

In pursuance of his intention to make the city of Washington his home William A. Richardson soon began to close out his investments in the State of Massachusetts, and invested all of his money in the city of Washington, principally in real estate securities. At the time of his death he had no property whatever in said State, except one or two parcels of unproductive real estate of trifling value. At the time of his death he was seized of considerable real estate in the District of Columbia, and possessed of personal estate, consisting principally of loans on real estate security in said city, aggregating upwards of \$300,000. That notwithstanding these facts, the defendants as executors of said will, yielding to a recital at the commencement thereof to the effect that the testator was a "citizen and inhabitant of Cambridge, in the County of Middlesex, in the Commonwealth of Mass.," caused the said will to be filed for record and probated in one of the probate courts in said county and State.

Complainants charged that the said Court of Probate was without jurisdiction in the premises, and has not and can not have any authority or control whatever over the said estate. They fear that unless they are protected in their rights they will be subjected to inheritance and other taxes and dues in said State, although their

said grandfather, William A. Richardson, had many years before established his permanent residence and home in the District of Columbia.

That under and by virtue of the powers and authority in said will contained, the defendants, as executors thereof and trustees thereunder, will have full and absolute control over said property and estate until the plaintiffs attain the age of 23 and 26 years, and that they will receive and disburse large sums of money for the objects and purposes in the said will specified. Complainants believe they are entitled to have defendants account in this court for all the property and estate passing under said will, from time to time and as often as may be necessary, and that such an accounting will be a protection to the defendants in the execution of their trust.

Complainants further believe that the said George F. Richardson has filed in the Probate Court of Middlesex County, Massachusetts, his resignation, both as executor and trustee under the will.

Prayers of the bill are: That the will and testament of said William A. Richardson may be construed and the rights of these plaintiffs thereunder ascertained and fixed by a decree of this honorable court.

That an account may be taken of all the property and estate which have been received by the defendants as executors and trustees under said will, and which, without wilful default, they might have received since they qualified as such executors, without abatement for charges or taxes claimed by the State of Massachusetts.

That the said executors be required from time to time to file accounts and as often as may be necessary, showing what moneys they have received and the disposition thereof.

That if it be true that the said George F. Richardson has filed his resignation as executor, and refuses and declines further to act as such, some fit and proper person may be appointed in his place and stead, to carry out the wishes and intent of said testator as set forth in his last will.

An amended bill was filed March 6, 1899. It was averred that since the death of the testator several deeds of trust intended to secure the payment of certain notes belonging to his estate have been foreclosed and the real estate by them secured bought in by defendants for and on account of said estate, upon which taxes are now charged in the District and paid out of the estate of said deceased.

The defendant Drury answered the bill admitting the general facts alleged therein. He averred that many years prior to the death of the testator, defendant, with one John T. Arms, had charge of the investment of the money of the testator. A large part of it was invested in what are called second trust notes. During the year 1893, the business depression produced a material decrease in real estate values in said District, which has since continued. In consequence of this depression and decrease many parcels of real estate given as security for the payment of said notes have been sold since the death of said deceased, at public auction, and bought in for the account of the estate to save it from loss. Some fifteen

or twenty different parcels have been sold and bought in with the result that many thousands of dollars of personal property have been thereby converted into real estate, which is taxable only in said District.

That before his death the testator deposited his last will with him, this defendant. That said George F. Richardson, a resident of Massachusetts and a brother of the deceased, came on to attend the funeral. After the services, the will was handed to said George F. Richardson, who then stated that it was his deceased brother's wish that his will should be probated in Massachusetts and his estate there administered. The defendant interposed no objection to said procedure and consented to said probate and administration, not being then advised that there was any question of jurisdiction of the Massachusetts court to admit said will to probate, and relying in that behalf upon his coexecutor, the said George F. Richardson, who was a lawyer of learning in that State.

Defendant admitted that George F. Richardson is not undertaking to manage or control the estate of said deceased, or in any way to interfere with the management of this defendant. He admits that he has had the entire care, custody, and management of said estate since the will was probated, and is responsible for all the money paid out and expended, and now has in his possession all the personal assets of the estate. The defendant is willing to account in this court or in any other court having jurisdiction for all the moneys and other property received by him and to hereafter account from time to time.

On April 1, 1899, an order was entered appointing Samuel A. Drury and Samuel Maddox trustees to perform the trust created and to receive from the executors all the property whereof the deceased died seized and possessed. Said trustees were required to give bond each in the sum of \$25,000.

On October 18, 1899, the court entered an order referring to the auditor to return the amount and character of the estate whereof the late William A. Richardson died seized and possessed, and to state the account of the executors and trustees under the will of said deceased.

The report of the then auditor, James G. Payne, was filed December 19, 1900, and attached thereto are schedules setting forth items of personal property and real estate. The trustees are charged with the personal estate received from the executors, amounting to \$270,209.04. Among the credits allowed are commissions to the executors, allowed by the Probate Court of Massachusetts, \$18,800. After deducting this and other items of expenditure, etc., they are charged with \$221,942.47. A special account is rendered of the Eliza C. Magruder trust, a trust fund in the hands of the testator, to the administration of which the present trustees succeeded. It appears that four other successive yearly reports were made of the administration, but the same are not set out in the record.

January 15, 1909, an order was made referring the case to the auditor to state the account of the trustees to January 17, 1909. Owing to the death of Auditor Payne, no report was made.

On June 16, 1909, Alexander R. Magruder and Isabel R. Magruder filed a petition in said cause in which they set forth the clause of the will directing payment to the said complainants of one-half of the fund upon the attainment of the age of 23, and the remainder at the age of 26 years. It was alleged that Isabel R. Magruder, the daughter of the testator, died April 4, 1898, leaving surviving her the petitioners. It sets out the decree of April 1, 1899, appointing Samuel A. Drury and Samuel Maddox trustees. It is alleged that on the petition of Drury and Richardson under the will, the same had been admitted to probate in the county of Middlesex, Massachusetts and that on April 11, 1899, the said court had ordered Drury and Richardson to pay over said property of said estate to the said Drury and Maddox, trustees as aforesaid. Afterwards, on April 25, 1899, said executors filed in said Probate Court their first and final account, which was approved by said court. A copy of the inventory filed in the Probate Court is attached as an exhibit to the petition.

It is further alleged that one of the petitioners, Alexander R. Magruder, when he became of age, made application to the court to be appointed a cotrustee with the said Samuel A. Drury, and Samuel Maddox, and by order he was duly appointed to act in connection with said Drury and Maddox as a trustee, and gave bond as was required by said decree. But since the receipt by the trustee of the property transferred and delivered to them by the order of the said Probate Court of Middlesex County, Massachusetts on the 25th day of April, 1898, said trustees, Drury and Maddox, have had the possession, management and control of the assets and property of said estate. The petitioner, Alexander R. Magruder, has had no active participation in the management thereof, nor in the execution of the aforesaid trusts. That said trustees have from time to time filed their accounts in this court—five in number—which have been referred to the auditor and passed by him. There is now before the auditor their sixth account, which is under consideration.

Alexander R. Magruder attained the age of 23 years on the 17th of January, 1906, and under the terms of the said will became entitled to receive from said trustee and to have and hold in his own right, one-fourth part of the assets of said estate, but he made no request therefor and allowed the same to remain in the custody of said trustees.

The petitioner, Alexander R. Magruder, attained the age of 26 years on the 17th day of January, 1909, and then became entitled under the terms of the aforesaid will to have turned over to him one-half of said estate and of all the property and funds constituting the same, and he thereupon and before said 17th day of January notified said trustees in writing that he desired to have his proportion of said estate at once transferred and conveyed to him.

The petitioner, Isabel R. Magruder, attained the age of 23 on the 20th day of April, 1909, and thereupon became entitled under said will to have turned over to her one-quarter of the said estate, and of all the property and funds constituting the same and notified said trustees in writing, before the 20th day of April, 1909, that she

desired to have her proportion or part of said estate at once turned over, transferred and conveyed to her.

The said trustees, Samuel A. Drury and Samuel Maddox, have made and presented to the petitioners a paper writing headed, "A list of assets comprising estate of William A. Richardson, deceased, in possession of Samuel A. Drury and Samuel Maddox, trustees, January 17th, 1909," which is hereto attached and marked Exhibit "C." In said statement or schedule are notes supposed to be good and well secured; real estate, the title of which is supposed to be good; stocks, supposed to be good; property to be held jointly by Alexander R. and Isabel R. Magruder.

Petitioner caused Messrs. Baker and Addison to make a valuation of each item of said property, and to present a plan of division between petitioners. Acting upon the advice of Messrs. Baker and Addison and with the approval of said trustees subject to the approval of this court, the petitioners have agreed upon and elected to make a distribution of the property in said statement. Alexander R. Magruder is to have turned over to him all the notes and pieces of ground and stocks described and enumerated in said allotment B. Under the terms of said will all the notes described in said allotment A and also the pieces and parcels of land therein described are to be held in trust. This is estimated to be one-fourth of the said trust estate.

The said petitioner Isabel R. Magruder is to have turned over and conveyed to her, all the other pieces and parcels of land and properties described in the said exhibit B under the heading allotment A.

Several other items of property are to be held jointly by her and Alexander R. Magruder, as tenants in common.

Petitioners are informed that said trustees are willing and prepared to turn over and convey the said properties as herein indicated and provided and to resign from and be divested of the trusts, powers and title, imposed and vested in them under the said will and the aforesaid order of this court, so far as the same relate to and affect the notes and the said two pieces or parcels of land aforesaid, and that the American Security and Trust Company may be substituted in their place and stead as trustee to hold and execute said trust in respect of said remaining notes and parcels of land in accordance with the requirements of the said will and testament.

The petitioner Isabel R. Magruder, by an indenture of this date, has conveyed to the American Security and Trust Company, trustee, in trust and upon the trust therein set forth all her right, title and interest in and to all the properties described in said allotment A.

Wherefore the petitioners pray: That the said trustees Drury and Maddox and Alexander R. Magruder may be authorized and directed to set over, assign, transfer, convey, and deliver to the said Alexander R. Magruder, by proper endorsement and conveyances, all the trust funds and property described in said exhibit B, under the heading of allotment B.

That the American Security and Trust Company may by this court be appointed trustee in the place and instead of the Samuel A. Drury and Samuel Maddox and Alexander R. Magruder in respect

of and for the said notes described in exhibit B, under the heading allotment A, to be held in trust under said will for the said Isabel R. Magruder. That the said trustee may be directed to convey and deliver to Isabel R. Magruder all the property described in said allotment, except the property hereinabove last described, and that the trustees be authorized to turn over to the petitioners as tenants in common all the notes, properties and real estate described in said allotment to be held jointly. That the cause be retained in this court for the purpose of having stated and settled the accounts of said trustees.

On July 9, 1909, the court entered a decree on said petition, granting the prayers thereof and directing the trustees to make conveyance and disposition of the property in accordance with the prayers. February 3, 1910, the former order not having been carried out, the court made another order directing that the cause be now referred to the auditor to state the final account of the trustees, and the distribution of the estate in their hands, and to report such commission or compensation, as may be appropriate and proper; also to state the account of the said trustees in respect of what is known as the Eliza C. Magruder trust.

March 16, 1910, a report of the auditor was filed and it is on the exceptions to several items of that report on which the decree was entered that this appeal has been prosecuted.

In regard to the item of \$18,800 allowed to the executors by the Probate Court of Massachusetts, to which objection was made by the petitioners, the auditor stated that this item had been included in the report of his predecessors heretofore referred to and made December 19, 1910, which was confirmed, and he had no authority to reopen the account therein without specific direction of the court; and further stated that the allowance having been made in the Probate Court of Massachusetts could not be reviewed in this court.

Respecting the objection of the allowance of commissions for the collection of rents in the third, fourth, and fifth reports of the auditor, the same conclusion with respect to his authority to surcharge the previous account of the auditor was renewed.

As regards the allowance of the trustee of 5 per cent commission on the principal and 10 per cent commission on the income of the trust estate, the report reviews at length the nature and character of the services performed. It states that the bulk of personal property consisted of notes for small sums, many of them payable monthly. He says that the transactions with respect to these notes were almost innumerable. The total number of the same approximating 3,000.

As regards real estate, he reports that the trustees collected the rents, looked after repairs, and kept the property insured. That they have paid off thirty-three trusts aggregating over \$100,000, including the trust upon the homestead; acquired twenty-four parcels by foreclosure and one parcel by deed without foreclosure; sold sixteen parcels and two party walls; bought four parcels; secured the cancellation of taxes and perfected the title to one parcel; all of these transactions involving great responsibility and extensive services on

the part of the trustees. The trustees have given the services of a trained and experienced business man in real estate matters, and a trained and experienced member of this bar during these years in the execution of this trust, services which have been highly creditable to them and beneficial to the estate in every respect. He states that they are well entitled to the 5 per cent commission on the principal, and the 10 per cent on the income, and the same was allowed. In respect to the objection based on certain profits alleged to have been made by Arms and Drury, of which partnership the trustee Drury was a member, he reports that no profits were made by trustees in said transaction. It appeared that they had from time to time, in making investments of the funds of the estate, purchased certain notes of Arms and Drury, which said notes were secured by trusts upon real estate, and were in the nature of builder's loans. They represented advances made by Arms and Drury, and from which in making the loans the said firm realized from 1 to 2 per cent commission. He found that Arms and Drury, out of their own money, made loans secured by these notes and received from the borrowers the customary commission of 1 and 2 per cent.

The report denied the claim of Alexander R. Magruder to any share of the allowance made to the trustees Drury and Maddox, because, as heretofore shown, Magruder, though appointed an additional trustee, never took any part in the management of the estate or the execution of the trust, and as a matter of fact has not resided in Washington since his appointment.

The report is accompanied with schedules showing several items of account and property distributed to the beneficiaries of the trusts; also separate schedule of the administration of the Eliza C. Magruder trust.

It appears from the report that the testator died possessed of 3,040 promissory notes, 118 secured by first deed of trust; 2,055 secured by second deed of trust; 322 partially secured; 487 security worthless; 58 of doubtful value. That during the period of the auditor's first report 849 collections had been made on the principal of notes amounting to \$127,467.81; 937 collections of interest on notes amounting to \$13,939.99; reinvestments in the purchase of 49 notes, \$74,307.40. Reinvested by paying off trusts on real estate \$28,816.57.

During the period of the auditor's second report 428 collections of principal amounting to \$54,893.10 were made; 1,105 payments of interest on notes amounting to \$20,046.99; collection from the sale of three parts of the real estate, \$12,004.83; reinvested in the purchase of 51 notes aggregating \$33,776; reinvested by paying off trusts of thirteen pieces of real estate \$35,513.08; reinvested in the purchase of two parcels of real estate, \$20,450.13.

During the period of the auditor's third report 360 collections on the principal of notes amounting to \$60,384.68 were made; 716 collections of interest on notes amounting to \$17,589.20; collections from five parcels of real estate, \$20,200; reinvested in the purchase of 40 notes, \$17,240; reinvested by paying off ten trusts upon real estate, \$51,659.54.

During the period of the auditor's fourth report 75 collections on the principal of notes, \$23,568 were made; 281 collections of the interest on notes, \$10,733.49; five sales of real estate, \$17,939.59; reinvested in the purchase of 14 notes, \$15,000; reinvested by paying off two trusts on real estate, \$18,000.

During the period of the auditor's fifth report, 121 collections of the principal of notes, \$29,293; 248 collections of the interest of notes, \$11,250.60; collected from the sales of three parcels of real estate, \$8,930.42; reinvested in the purchase of ten notes, \$35,150; reinvested by paying off one trust on real estate, \$6,000; reinvested in the purchase of one parcel of real estate, \$150.

The following general summary of the five reports of the auditor is given, as follows:

Collected from principal of notes in 1,833 payments..	\$295,705 59
Collected interest on notes in 3,287 payments.....	72,560 27
Collected from fifteen sales of real estate.....	58,074 84

Total collections from all three sources.....	\$426,340 70
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Reinvestments.

In the purchase of 164 notes.....	\$175,473 40
In paying off 43 trust notes.....	139,989 19
In the purchase of three parcels of real estate.....	20,600 13

Total reinvestments	\$336,062 72
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Besides these there were many other transactions in real estate which were acquired under foreclosure sales or direct deeds from the owner where foreclosures had been had or the deeds obtained on account of second trust indebtedness.

In the record there appears a certified copy of the proceeding in the Probate Court of Middlesex County, Massachusetts. The first among these is an order dated February 16, 1897, appointing appraisers of said estate. Among the items therein scheduled are notes secured on real estate in the District of Columbia amounting to \$216,755.05. Notes payable monthly secured by second deed of trust in Washington, D. C., \$76,961. Notes partially secured, \$9,750. Doubtful notes amounting to \$5,995. Notes considered as of no value, \$32,619.78.

The real estate appraised consisted of lands in the District of Columbia, Massachusetts, Missouri, and Colorado.

Next follows the petition filed April 4, 1899, by Richardson and Drury, executors, representing the probate of the will of the deceased and the acceptance by the executors of the trust imposed. It set out that since the granting of said letters there had been no personal property of the estate of the testator in the Commonwealth of Massachusetts; that since the granting of letters testamentary Isabel R. Magruder, the only surviving heir, has deceased, and sets out the interest of her surviving children by the terms of the will. That they are the only parties interested as beneficiaries of the trust

at the time of the probate of the will, and they have since resided in the District of Columbia. That Samuel A. Drury and Samuel Maddox have been appointed by the equity court of the District of Columbia to administer the trusts created by said will. That Alexander F. Magruder has been appointed by said court guardian of said minors and has duly accepted said trust.

William A. Richardson at the time of his decease was not a resident of the State of Massachusetts, but was a resident of the said Washington, and that all the parties interested under the trust in said will lived in the District of Columbia and that said will should not have been probated in said Probate Court, but should have been probated in the District of Columbia.

Wherefore your petitioners, without waiving their rights as to the jurisdiction of this court to probate said will, but insisting that the same was probated in this court by accident and mistake and should have been probated at said Washington, pray that they may be authorized to pay over said trust funds to said trustees appointed in said Supreme Court of the District of Columbia as aforesaid, and that upon such payment they may be discharged from further responsibility by decree of this court.

Alexander F. Magruder, of the District of Columbia, reciting himself as the duly appointed guardian of Alexander R. Magruder and Isabel R. Magruder, endorsed said petition and signified his consent to the granting of the above petition and requested that said authority be given the executors to pay over the trust funds in their hands to the trustees appointed by the Supreme Court of the District of Columbia.

The petition came on to be heard and it was decreed that the said executors be and are hereby authorized and directed to pay over said trust fund to the said Maddox and Drury, trustees. The executors were ordered to present an account of their administration of the estate for the period beginning with the 24th of November, 1896, and ending with the 24th of April, 1899. They filed an account charging themselves with the several items received as stated in the schedule aggregating \$415,458.37. The items therein are set out in Schedule A. In Schedule B appears the list of the payments, charges, losses, and distributions of the property turned over to the trustees, amounting in the aggregate to \$415,458.37. This was accompanied by a receipt of Maddox and Drury, trustees, of the items stated in the account as turned over to them.

One general item in Schedule B is as follows: The expenses of administration, including the care of property, the payment of debts, the collection of notes amounting to \$226,607.54; investment of interest notes, \$166,958.21; the collection from interest and other sources, \$58,168.94; the payment of about \$50,000 for repairs on real estate, including also the payment of moneys to Isabel R. Magruder and Alexander R. Magruder, counsel fees in Massachusetts and in Washington, etc., \$18,800.

It appears that during the administration of the estate in Massachusetts that Commonwealth levied taxes upon the personal property for two years, 1897 and 1898, amounting to about \$7,500 per year.

Collection of these taxes was resisted by the executors on the ground that the property was in the District of Columbia, and, therefore, not subject to taxation in Massachusetts. In that litigation the executors were represented by Samuel Maddox and the Hon. William H. Moody, then a member of the bar of Massachusetts. The fees of counsel were paid by Drury out of the item allowed for expenses, the said Richardson declining to accept any part thereof. The litigation terminated in favor of the estate, after the settlement of the account.

In reporting a settlement of this final account, the auditor charged the trustees with all the commissions received by them under the former annual reports.

A number of exceptions were entered to said report. Those that have been relied on relate to the allowance of the 5 per cent. commission on principal and 10 per cent on income; to the \$18,800 item allowed by the Massachusetts court; and to alleged profits made by the trustees in the purchase of notes for reinvestment.

The exceptions were all overruled, the report confirmed, and the trustee ordered to turn over the funds of the trust to the beneficiaries, and, in part, to a substituted trustee, and to be finally discharged on filing proper vouchers and receipts.

1. The first exception to the auditor's report is to the allowance to the trustees of 5 per cent commissions on the principal, and 10 per cent on the income of the estate. There is no statute in the District regulating the compensation of trustees, and the matter of allowance therefor is within the sound discretion of the equity court. The rule prevailing in the United States in this respect is different from the rule governing in England. Here, "it is considered just and reasonable that a trustee should receive a fair compensation for his services; and in most cases it is gauged by a certain percentage on the amount of the estate." *Barney v. Saunders*, 16 How., 535-542. The commissions allowed in that case were 5 per cent on principal and 10 per cent on income. Discussing the rate, Mr. Justice Grier said: "The allowances as made by the auditor in this case are, we believe, such as are customary in Maryland and this District, where the trustee has performed his duty with honor and integrity." The commissions allowed in this case being within the power of the auditor, it was his duty to determine from the evidence before him regarding the character of the services performed by the trustees what would be a reasonable and fair compensation therefor. It is a well-established doctrine that the report of an auditor, that has been confirmed, should be permitted to stand unless there is some obvious error or mistake therein. *Richardson v. Van Auker*, 5 App. D. C., 209-218; *Grafton v. Paine*, 7 App. D. C., —; *Smith v. Trust Co.*, 12 App. D. C., 192-198; *Hutchins v. Munn*, 28 App. D. C., 271-279; *S. C.*, 209 U. S., 246-250; *France v. Coleman*, 29 App. D. C., 286-293.

It appears that it had been the practice of the testator for some years before his death to invest his money in loans of comparatively small amounts, secured by second mortgages on real estate in the District of Columbia. Many of the notes were payable monthly.

At the time of his decease these investment notes constituted the larger part of his entire estate and the bulk of his personalty. In the first report of the former auditor, in 1900, to which no exception seems to have been taken, he allowed the trustees 10 per cent commission upon the income of the estate. The grounds upon which this allowance was made were thus stated in the report:

"These collections and their disbursement form but a part of the service imposed upon these trustees and a much smaller part of their responsibility. I have taken into consideration the magnitude of the principal, personal estate, and its shifting character as illustrated by the conversion of more than one-half of the promissory notes into money during the period of this account and the reinvestment of the funds in other safe, interest-bearing securities as well as the discharge of nearly thirty thousand dollars of liens upon the real estate. The compensation allowed in this report is less than the value of the service, but no more is claimed by the trustees."

Like reasons were assigned by the auditor in the report under consideration.

Without consuming time with the review of the evidence relating to the administration of the trust, we think it sufficient to say that while the allowance was a liberal one, it is not obviously excessive, nor has it been shown to be founded on a mistake that, under the rule before stated, would justify the setting aside of the report on the exception taken.

2. The next exception relates to the item of \$18,800 allowed in the settlement of the final account of the executors by the Probate Court of Massachusetts. This amount is scheduled in the first report of the auditor returned December 17, 1900, as deducted from the trust estate charged to the trustees. In other words, they were in effect charged with the net balance shown by that account as received from the executors. In the final report the auditor expressed the opinion that he had no power under the reference to reopen the account settled by his predecessor. Another ground assigned was that the equity court had no power to inquire into or set aside the settlement made by the Probate Court. This report was based on the consideration that the administration and the responsibility of the trustees, under the appointment of that court, extended only to the net balance ordered to be delivered to them by the Probate Court.

Appellants contend that the Probate Court of Massachusetts had no jurisdiction to probate the will because the testator was domiciled in the District of Columbia; that its proceedings are void, and that the trustees are chargeable with the entire estate as it existed on April 1, 1899, when the decree appointing the trustees was entered. It appeared that the testator had some real estate in Middlesex County, Massachusetts, and this gave jurisdiction to its court to probate the will and, at least, to administer such of the estate as was in that State. A prima facie ground of jurisdiction was afforded by the recital in the will that the testator was both a citizen and an inhabitant of Massachusetts, which fact the executors confirmed by offering the will for probate. Whether this is a collateral attack on the judgment of this court which will not be entertained (see R. R.

Co. v. Gorman, 7 App. D. C., 91-106), is a question that does not necessarily arise. However that may be, the adjudication of domicile was not conclusive of that fact in a proper proceeding in the courts of the District of Columbia, or of their right to administer such of the estate as was actually within their jurisdiction. Overby v. Gordon, 13 App. D. C., 392-413; S. C., 177 U. S., 214-227. There were no creditors in the District, and the only persons interested were the child and grandchildren of the testator for whose benefit the trust was created. No offer was ever made to probate the will in the District of Columbia, which was necessary to confer power on the executors to administer the estate therein. The only source of their authority was the order of the Massachusetts court admitting the will to probate and issuing the letters testamentary which they received. They submitted the entire personal estate (consisting chiefly of loans evidenced by notes and secured by mortgages in the District) to the appraisers appointed by that court, and administered the same under its authority from the date of probate—October, 1896—until delivered to the trustees appointed by the decree of the equity court in April, 1899. Whether this voluntary submission by the executors of the personal estate in their actual possession, which was acquiesced in by the adult beneficiary and the guardian of the infant beneficiaries, to the administration of the Massachusetts court, constituted such an actual removal of the same to that State so as to bring it under the complete jurisdiction of that court, suggests another question that we need not decide. There is no conflict of jurisdiction between the probate courts of the two jurisdictions, for, as we have seen, there has never been an attempt to probate the will in this District. It is to be remembered that the immediate purpose of filing the bill to procure administration of the trust was to escape from taxation in the State of Massachusetts for the new taxing year about to begin. The allegations of the bill that testator was domiciled in the District, that his personal estate was situated there, and that the Probate Court of Massachusetts had no jurisdiction to probate the will and administer the estate, were in line with the main purpose and contentions in the pending suits in that State for the taxes of the two preceding years. There was no denial of these allegations by the executor Drury, who was the only defendant before the court. The reason assigned by him for the probate was that immediately after the burial of the deceased he delivered the will to George F. Richardson, a brother of testator and one of the executors nominated by him, who stated that it was testator's wish that his will should be probated in Massachusetts. Defendant consented thereto, not being advised that there was any question of jurisdiction, and relying in that behalf upon the said Richardson, who was a lawyer of learning and distinction in that State. Assuming it to be true, as alleged, that said George F. Richardson had declined to act as trustee of the estate, he consented to the appointment of another in his stead. No attack was made in the bill upon the administration of the estate for the intervening period. The prayers were that the will may be construed and the rights of plaintiffs thereunder ascertained; that an account be taken

of all the property and assets which have been received by the defendant Drury, as "executor and trustee," under the will, since he qualified as such executor, without abatement for assessments and taxes claimed by the State of Massachusetts; that defendant as "executor and trustee," be required to file accounts from time to time; that some fit person be appointed instead of George F. Richardson to carry out the trusts created by said will; and that defendant be restrained, in the meantime, from paying out any money in his hands for dues and taxes to the State of Massachusetts. The restraining order was at once issued. The decree rendered thereon continued the restraining order. It then recited that the testator was last domiciled in the District of Columbia, that the beneficiaries are there domiciled also, and then appointed Drury and Maddox trustees to perform the trusts created by said will, empowering them to receive from "the executors named in said will all of the property whereof the said deceased died seized and possessed." No express adjudication was made as to the jurisdiction of the Massachusetts court or as to the acts of the executors in offering the will for probate there, and subjecting the personal property to appraisal and administration thereby. That there was no such intended adjudication was the construction put upon it by all of the parties interested. The then appointed substitute trustee, Maddox, had filed the bill as solicitor for the plaintiffs. Within the month thereafter Drury and Richardson, as executors, filed an account in the Probate Court showing their administration of the estate. Their petition recited the facts concerning the probate of the will, the interests of beneficiaries, and the decree of the equity court aforesaid appointing trustees. It further stated that at the time of his decease the testator was not domiciled in Massachusetts and that his will, instead of being probated in Massachusetts, should have been probated in the District of Columbia; and that the probate was the result of mistake. They prayed an order authorizing them to deliver the trust funds in their hands to the said trustees, and that they be discharged from further responsibility. The account rendered, among other items of credit for collections, payments, etc., contained the item for expenses of administration, aggregating \$18,800, that is now in question. An endorsement on said account to the effect that the same had been examined, and was requested to be allowed without further notice, was signed by the then infant beneficiaries, by their guardian Alexander F. Magruder, who was also their father, and by Maddox and Drury, trustees. Drury, it is true, was approving his own account, but Maddox had no special concern therein, save as representing the beneficiaries. The court entered an order approving the account, and directing the executors to deliver the estate to the trustees. On the back of this account Maddox and Drury, trustees, executed a receipt to the executors for the items of cash, and other personal property shown by the account to be in the hands of the executors. Thereafter, on October 18, 1899, the order was made by the equity court requiring the auditor to report the amount and character of the estate of which the testator died seized and possessed, and to state

the account of the executor and trustees under the will of the deceased.

The auditor's report, heretofore referred to as made December 19, 1900, returned an account showing the credit made by the Massachusetts court, and charging the trustees with the balance shown by that account. No exception was made to this report, and it stood confirmed under the rules of the court. Four other reports were made, and no exception was taken to the recognition of the old account as the basis of the liability of the trustees. No attack was made upon the settlement of the account in Massachusetts, and no complaint made that the trustees were responsible for the entire estate of the testator, without diminution to the extent of the allowances made to the executors in the settlement of their account by the Probate Court.

It is to be noted, too, that the active administration of the estate had been in the hands of the executors for more than two years prior to the settlement of this account. Many collections of debts had been made and many reinvestments of money. The real estate was also being looked after, taxes were paid, and litigation had been maintained with the State of Massachusetts on her claim for taxes for the years 1897 and 1898—litigation that finally ended in favor of the executors after the settlement of this account. While it is contended that under the decree of the equity court the executors were required to turn over all of the estate of which the testator died seized and possessed, and that the trustees became responsible therefor, all of the credits allowed in the account were accepted as determining the amount for which the trustees should be held to account, save and except the item of \$18,800 allowed them for expenses of administration. The first objection made to this item, as we have seen, was in the exceptions to this final report and settlement.

In this connection another point suggests itself as entering into the consideration. Under the law in force when the testator died there was no provision for the probate of a will as to real estate, in this jurisdiction; but wills of personalty were authorized and required to be probated. The equity court had no jurisdiction to probate a will, and to establish and enforce one as to personalty. Whatever may be the latitude of the rights and powers of executors of unprobated wills, by the rules of the common law, or whatever may be the limitations thereof resulting from our probate statutes, it is quite certain that they had no power to administer a trust of personal property created by will, without its probate in due form. As there was no probate in the District the authority of the executors necessarily rested in the probate and letters testamentary of the Massachusetts court; and it was as such executors that they were brought before the court and directed to deliver the property to the trustees appointed to administer the trusts in that will. The conditions recited, and the acquiescence of all parties at interest, in the proceedings and orders of the Massachusetts Court are sufficient, in our opinion, to estop them now to impeach the settlement made by that court of the accounts of the executors, and of the balance required to be delivered to the trustees. We think the auditor and the court were right,

therefore, in refusing to review that account, reject the allowance therein made, and charge the item to the trustees as part of the trust fund received by them.

This disposes also of the contention that this allowance for expenses of administration should have been considered as an element of the amount of compensation allowed to the trustees in the final settlement, the basis of which was the net balance received by them from the executors as shown in the Massachusetts settlement. No credit was made them or to Drury for services prior to the commencement of administration under the appointment of the equity court of this District.

3. The only attack made upon the fairness of the administration of the trustees occurs under the exception to the auditor's report on the ground that he failed to ascertain and charge the trustees, as he should have done, with certain profits alleged to have been realized by them in the purchase of certain notes for reinvestment of the trust funds.

The facts upon which the contention is founded are these: That Drury was a member of the partnership of Arms and Drury, and that for the purpose of reinvesting the funds of the trust, the trustees purchased many notes, aggregating large sums, from said partnership. The evidence shows that these purchases were made at par with any accrued interest, that the notes were good and nothing had ever been lost on them. It appears that Arms and Drury had been engaged, as part of their real estate business, in lending money of their own to parties engaged in building houses, taking notes therefor secured by building contracts and mortgages. Upon these loans they made a profit varying from 1 to 2 per cent. No money of the trust was used in such loans. The profits of Arms and Drury from the transaction were derived from the original borrowers. No profits were made in selling the notes, which were all well secured, to the trustees, and the latter took them at their face value, obtaining no profit therefrom.

It is true that a trustee should not deal with himself, and in any transaction with the trust fund in which he has made a loss by such dealings, he should be held to the strictest account. If, on the other hand, he realized profits he should be made to account fully for them. No *principal* is better settled than that a trustee shall not make a personal profit from the use of trust funds. We would not be understood as qualifying this salutary rule in the slightest degree; but we can not perceive that it applies here. Grant that it would have been better for Drury not to make purchases for reinvestment from a partnership of which he was a member, and thereby avoid opportunity for criticism; yet it is clear that the notes were bought at their face and actual value, that no profit was made by the trustees, and that not a dollar was lost to the estate. Drury knew the character of the notes, and there was less trouble and expense in the investigation of titles than there would have been in the purchase of similar securities from others; nor does it appear that like securities could have been readily obtained from others. Moreover, the other trustee, Maddox, had no connection with the partnership of Arms and Drury.

He was entirely dis-interested and there is no complaint against him other than that he concurred in the purchase of the securities.

Should the trustees jointly, or Drury singly, be charged in the settlement of their final account with any profit that Drury may have realized, as a member of the partnership of Arms and Drury, from the original loans of the money of that firm, which formed the basis of the notes, subsequently purchased in good faith by the trustees for the reinvestment of the trust funds?

The trustees lost nothing on the notes and charged themselves with the exact amount paid for each. They paid no more than they would have done in the purchase of like notes from other persons engaged in the same business as Arms and Drury, which persons would have realized a similar profit from their borrowers. We do not think that Drury, under any principle of equity, can be called on to surrender to his beneficiaries his profit made in previous transactions with other persons and at their expense, simply because he and his cotrustee subsequently purchased the paper in the securing of which those profits had been made, and in which purchases no profit was made, or expected to be made, at the expense of the estate. Dealings with the partnership of Arms and Drury by trustees, one of whom was a member of the partnership, call for the closest scrutiny of each and every such transaction, but when that scrutiny has disclosed no actual wrongdoing, no advantage taken of the situation, no profits made and no possible injury to the interests of the beneficiary, there is nothing calling for restoration by the supervising court. A pecuniary charge therefor in the settlement of the account would, under such circumstances, not be a restoration, but could be inflicted only by way of fine and punishment.

4. The last assignment of error relates to the decree of the court, which provides that when the trustees shall file vouchers showing the distribution and final disposition by them of the trust funds in their hands or shown by the auditor's report, they shall be and are hereby discharged of and from their said office of trustees under their said appointment by the court in this cause. Upon the confirmation of the auditor's report this was the proper decree to be entered. The objection to it, however, is that it also discharges them as trustees of what is known as the Eliza C. Magruder trust. It appears that, prior to his decease, the testator had executed an acknowledgment of a trust in certain property in his hands, consisting of stocks, and of real estate in the District of Columbia, and the State of Missouri, for the benefit of Eliza C. Magruder, the beneficial estate to go at her death to the children of Alexander F. Magruder, who are the plaintiffs in this proceeding. By the decree of April 16, 1899, Maddox and Drury were also appointed trustees of this trust. Separate accounts of the administration of that trust have always been kept and reported. The account was before the auditor in this reference and he settled the same separately. No exception was taken to that part of his report. It is evident that the court in entering the decree did not intend then and there to terminate the administration of that trust, but the form of the decree may be objectionable as warranting the construction given it by the appellants.

The case has not been finally closed in the equity court, and its power to correct the decree in that respect is fully recognized.

So far as the decree confirms the auditor's report of the account of the trustees of the administration of the trusts created by the will, it is affirmed with costs. So far as the Eliza C. Magruder trust is concerned the cause will be remanded with leave and direction to the court to amend the decree in so far as it may relate thereto, and take such final action regarding that trust estate as may be expedient and proper.

Affirmed.

MONDAY, *December 4th*, A. D. 1911.

October Term, 1911.

No. 2265.

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants,
vs.

SAMUEL A. DRURY and SAMUEL MADDOX, Trustees.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause in so far as it confirms the Auditor's report of the account of the Trustees of the administration of the trusts created by the will, be and the same is hereby affirmed with costs; so far as the Eliza C. Magruder trust is concerned the cause will be remanded with leave and direction to the Court to amend the decree in so far as it may relate thereto, and take such final action regarding that trust estate as may be expedient and proper.

Per MR. CHIEF JUSTICE SHEPARD,
December 4, 1911.

Court of Appeals, District of Columbia.

No. 2265.

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants,
vs.

SAMUEL A. DRURY and SAMUEL MADDOX, Trustees.

Now come the appellants in the above entitled cause, by Nath'l Wilson, their counsel, and move the Court to allow them an appeal to the Supreme Court of the United States from the decree entered herein on the fourth day of December, 1911, and to fix the penalty of the bond for costs on said appeal.

NATH'L WILSON,
Counsel for Appellant.

(Endorsed:) No. 2265. Alexander R. Magruder, et al., Appellants, vs. Samuel A. Drury, et al. Petition for allowance of appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Dec. 21, 1911. Henry W. Hodges, Clerk.

THURSDAY, *December 21st, A. D. 1911.*

No. 2265.

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants,
vs.

SAMUEL A. DRURY and SAMUEL MADDOX, Trustees.

On motion of Mr. Nathaniel Wilson, of counsel for the appellants in the above entitled cause, It is ordered by the Court that said appellants be allowed an appeal to the Supreme Court of the United States and the bond for costs is fixed at the sum of three hundred dollars.

(Bond on Appeal.)

Know all Men by these Presents, That we, Alexander R. Magruder and Isabel R. Magruder, as principals, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Samuel A. Drury and Samuel Maddox, Trustees in the full and just sum of three hundred dollars, to be paid to the said Samuel A. Drury and Samuel Maddox, Trustees, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twenty-first day of December, in the year of our Lord one thousand nine hundred and eleven.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between Alexander R. Magruder and Isabel R. Magruder, as appellants, and Samuel A. Drury and Samuel Maddox, Trustees, as appellees, a decree was rendered against the said Alexander R. Magruder and Isabel R. Magruder and the said Alexander R. Magruder and Isabel R. Magruder having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Samuel A. Drury and Samuel Maddox, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such, That if the said Alexander R. Magruder and Isabel R. Magruder shall prosecute said appeal to effect, and answer all costs if they fail to make

their plea good, then the above obligation to be void; else to remain in full force and virtue.

ALEXANDER R. MAGRUDER,
By NATH'L WILSON, [SEAL.]
His Attorney in Fact.

ISABEL R. MAGRUDER,
By NATH'L WILSON, [SEAL.]
Her Attorney in Fact.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,
By H. B. HODGE,
Attorney in Fact.

[Seal of Fidelity and Deposit Co. of Maryland.]

Sealed and delivered in presence of—
E. L. WHITE.

Approved by—
* SETH SHEPARD,
*Chief Justice Court of Appeals of the
District of Columbia.*

[Endorsed:] No. 2265. Alexander R. Magruder et al., Appellants, vs. Samuel A. Drury et al. Bond for costs on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Dec. 22, 1911. Henry W. Hodges, clerk.

UNITED STATES OF AMERICA, ss:

To Samuel A. Drury and Samuel Maddox, Trustees, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Alexander R. Magruder and Isabel R. Magruder are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 22d day of December, in the year of our Lord one thousand nine hundred and eleven.

SETH SHEPARD,
*Chief Justice of the Court of Appeals
of the District of Columbia.*

Service acknowledged Dec. —, 1911.

J. J. DAVENPORT,
Counsel for Appellees.

[Endorsed:] Court of Appeals, District of Columbia. Filed Dec. 22, 1911. Henry W. Hodges, Clerk.

Court of Appeals, District of Columbia, October Term, 1911.

No. 2265.

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants,
vs.

SAMUEL A. DRURY and SAMUEL MADDOX, Trustees.

Assignment and Specification of Errors.

Now come the appellants in the above entitled cause and assign the following as errors on their appeal to the Supreme Court of the United States:

I.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree discharged the appellees as trustees to execute the trusts created by the will without requiring of them an account of their acts as such trustees prior to April 24th, 1899, and subsequent to the death of the testator, the late Judge William A. Richardson, October 19th, 1896, and in holding that inquiry into their acts prior to April 24th, 1899, is shut off by the settlement, by consent, of the accounts of the Executors by order of the Probate Court of Middlesex County, Massachusetts, passed April 24th, 1899.

II.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree finally discharged the appellees as trustees to execute the trusts created by the will without taking into account the fact that they had as trustees and without authority from or report to the Court appointing them, consented on behalf of the trust estate to the passage of a consent order of the Probate Court of Middlesex County, Massachusetts, by which \$18,800 was ordered to be paid out in diminution of the trust estate, of which \$18,800 the sum of \$1,500 was paid to one appellee for his own use as counsel fee and \$14,600 was paid to the other appellee for his own use.

III.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree finally discharged the appellees as trustees to execute the trusts created by the will without taking into account the fact that one of the appellees had made profits out of his dealings in his individual right with the trust estate, and without directing or permitting an inquiry into the extent of or the profit derived by him from the transactions of the firm, of which he was a member, with the trust estate in the nature of sales of negotiable paper to the trust estate bought at a discount by the said appellee's firm.

IV.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree allowed to the trustees the maximum commission permitted by custom or practice, five per cent of the principal and ten per cent of the income of the trust property, without taking into consideration the appellees' failures to account, set forth in the assignments of error numbered I, II and III, and in so far as said decree affirmed the report of the Auditor wherein it is held that the matters complained of are immaterial in fixing the appellees' commissions for their services as trustees.

V.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree fixed the compensation to be paid to the appellees as trustees by a calculation of a percentage upon \$313,321.34, the value of the principal of the personal estate as it came into the hands of the trustees, and disregarded the lesser value of the estate transferred to the appellants and the value thereof when they were discharged.

VI.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia "so far as that decree confirms the Auditor's report of the account of the trustees of the administration of the trusts created by the will", notwithstanding the fact referred to in the opinion of the Court that an important trust known as the Eliza C. Magruder trust, which was vested in and is being administered by the said trustees under the provisions of the will, has not yet been executed, and notwithstanding the fact shown by the record that the trust estate, consisting of valuable securities and real estate, still remains in the possession of the trustees.

VII.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia "so far as the decree confirms the Auditor's report of the account of the trustees of the administration of the trusts created by the will", and provides that upon certain payments being made by them out of the trust fund in their possession, they shall be discharged from their office as trustees, notwithstanding the fact shown by the record that after the appointment of Mr. Drury and Mr. Maddox as trustees by the decree of April 1, 1899, the said Supreme Court of the District of Columbia, in recognition of the request or recommendation of the testator in his will, appointed and constituted his grandson, Alexander R. Magruder, one of the plaintiffs, and one of the beneficiaries under said will and an ultimate beneficiary in said Magruder trust, co-trustee with the said Samuel A. Drury and Samuel Maddox, trustees as aforesaid, and notwithstanding the fact that the said decree of appointment remains in full force and the said Alexander R. Ma-

gruder continues to be vested with all the rights, interests and powers vested in him by said decree of appointment, in all the property and funds, money and estate now in the possession of Samuel A. Drury and Samuel Maddox, trustees.

VIII.

The Court below erred in its decision and judgment wherein and whereby it gives and seeks to give validity and effect to the said decree so far as it confirms the Auditor's report as to the amount of the money due to the trustees as compensation for their services as trustees and provides that upon the payments being made by them, specified in the Auditor's report, to themselves and others named, they shall be discharged of and from their office as trustees under their appointment by the Court, while at the same time and by the same judgment, in respect of the Eliza C. Magruder trust, the said Drury and the said Maddox and the said Alexander R. Magruder are still and are to remain trustees and are to continue in possession of trust funds and property.

IX.

The Court below erred in determining and providing for the payment of definite sums of money to the trustees, Drury and Maddox, for their compensation out of the moneys of the estate in their possession before all the trusts in which they have been constituted trustees have been executed and before the rights and duties of their co-trustee, Alexander R. Magruder, in the trust property remaining in the possession of Drury and Maddox have been ascertained and settled, and before the said trustees have made a full and complete accounting as required by the original decree of appointment and the orders made thereunder.

X.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia holding and deciding that the exceptions taken by the appellants are not sufficient to require the recommitment of the case to the Auditor, and decreeing that said exceptions be severally overruled.

NATH'L WILSON,

Attorney for Appellants.

(Endorsed:) No. 2265. Alexander R. Magruder, et al., Appellants, vs. Samuel A. Drury, et al. Assignment of Errors. Court of Appeals, District of Columbia. Filed December 30, 1911. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 168 inclusive contain a

true copy of the transcript of record and proceedings of said Court of Appeals in the case of Alexander R. Magruder and Isabel R. Magruder, Appellants, vs. Samuel A. Drury and Samuel Maddox, Trustees, No. 2265, October Term, 1911, as the same remains upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 22d day of December A. D. 1911.

[Seal Court of Appeals, District of Columbia. 1893.]

HENRY W. HODGES,
*Clerk of the Court of Appeals
of the District of Columbia.*

Endorsed on cover: File No. 22,991. District of Columbia Court of Appeals. Term No. 155. Alexander R. Magruder and Isabel R. Magruder, appellants, vs. Samuel A. Drury and Samuel Maddox, trustees. Filed December 30, 1911. File No. 22,991.